

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

UNITED STATES OF AMERICA : VOLUME II
:
vs. :
:
MARTIN LOUIS BALLARD : 2:12 - CR - 232

Trial continues in the above-captioned matter on
Wednesday, May 6th, 2015, commencing at 10:18 a.m., before
the Hon. Sol Blatt, Jr., in the United States Courthouse,
Courtroom III, 81 Meeting St., Charleston, South Carolina,
29401.

APPEARANCES:

JULIUS N. RICHARDSON, ESQUIRE,
PETER T. PHILLIPS, ESQUIRE, Office of the
U.S. Attorney, P.O. Box 978, Charleston, SC,
appeared for the Government.

JERRY N. THEOS, ESQUIRE and
PHILIP R. HAMMOND, ESQUIRE, P.O. Box 399,
Charleston, SC, appeared for defendant.

REPORTED BY DEBRA L. POTOCKI, RMR, RDR, CRR
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843/723-2208

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1 MR. RICHARDSON: One issue I wanted to put on the
2 record, I've discussed this with Mr. Theos, and that I don't
3 believe there's any concern about it, but the Government's
4 Exhibit 4, which was introduced yesterday, was a quantity of
5 crack cocaine. That quantity of crack cocaine has actually
6 accidentally been destroyed; we no longer have it. As part of
7 an evidence retention policy it was destroyed, we don't have
8 it, so we withdraw that exhibit. It doesn't make any
9 substantive difference where we are in the case, so we'll
10 withdraw that.

11 THE COURT: Is that satisfactory with defendant?

12 MR. THEOS: It does, Your Honor. We understand it's
13 been destroyed. We're not sure the reason for it. The
14 importance of it certainly would go hand in hand with any
15 arguments I have related to the other drugs that have been
16 preserved and presented as evidence. Doesn't change our
17 position related to those drugs, Judge, in other words.

18 THE COURT: I mean, he's saying that the exhibit has
19 been destroyed, as I understand it.

20 MR. THEOS: I understand.

21 THE COURT: Accidentally.

22 MR. RICHARDSON: Yes, sir.

23 THE COURT: And he's apparently given a number to it,
24 and he doesn't have the exhibit, so he wants to withdraw the
25 number.

1 MR. RICHARDSON: Exactly, Your Honor.

2 THE COURT: Now, is that satisfactory?

3 MR. THEOS: That is satisfactory, Judge.

4 THE COURT: Okay.

5 MR. THEOS: Your Honor, one other matter, if you
6 don't mind, that Mr. Richards and I discussed. If you recall
7 yesterday, when I was cross-examining Mr. Robinson regarding
8 his record, there was some confusion, and the Government
9 objected to my questioning regarding a conviction that -- an
10 arrest and conviction that occurred in 2010. And I don't know
11 if you recall that. But I've got the rap sheet that was
12 provided by the Government, and I want to make this for the
13 record, it does, in fact, reflect that there was an arrest in
14 2010 of Mr. Robinson, and that arrest was for trafficking
15 cocaine. The arrest took place on October the 26th of 2010.
16 As you recall, Mr. Robinson denied that, and the Government
17 objected. But the rap sheet does, in fact, reflect that he
18 was charged with trafficking cocaine, ten grams or more, but
19 less than 28 --

20 THE COURT: Well, is that in evidence?

21 MR. THEOS: It is not in evidence, but I'm happy to
22 introduce it in evidence, as this was provided by the
23 Government.

24 MR. RICHARDSON: Your Honor, the only confusion,
25 there's no doubt that he had a trafficking charge. There was

1 only a dispute about the date, whether it was 2010 or 2011.
2 Mr. Robinson maintained it was 2011. I believe the correct
3 information is, in fact, 2011, but Mr. Theos is correct, the
4 rap sheet does say 2010. As Your Honor's aware, rap sheets
5 are sometimes more reliable than others. But from our
6 perspective, I don't think it needs to be made an exhibit, it
7 doesn't really make any difference, it's a matter of time, not
8 substance.

9 MR. THEOS: Your Honor, it also reflects that he was
10 sentenced to three years incarceration, and which our position
11 is the -- in direct conflict with what his testimony was
12 regarding not only the arrest and the conviction, but also his
13 incarceration. So I would like to introduce it as an exhibit.

14 THE COURT: Well, the Government doesn't have any
15 objection to that?

16 MR. RICHARDSON: Your Honor, it's not actual
17 evidence, it's hearsay and inadmissible to show whether he was
18 convicted or whether he was sentenced. It's not evidence of
19 his conviction or evidence of his sentence. If he wants to
20 introduce a certified public record to establish that, he's
21 entitled to do that, but he's not entitled to rely on hearsay
22 as part of a rap sheet to prove up those facts.

23 THE COURT: Well, is that something that you
24 furnished him? I say you, I mean the Government.

25 MR. RICHARDSON: We provided a rap sheet for every

1 witness, yes, we did.

2 THE COURT: What you're saying is you're not
3 guaranteeing the authenticity.

4 MR. RICHARDSON: The rap sheet is in the system, but
5 that's why we don't rely on a rap sheet to prove a conviction,
6 we rely on a certified court document to prove a conviction,
7 because that's what's reliable, not a rap sheet. And so we
8 provide rap sheets to be useful, but they are hearsay, and
9 only would point someone to where the right documents would
10 be.

11 THE COURT: I don't think the rap sheet normally
12 would be admissible, I agree with. I don't know what they
13 were provided, in answer to what they were provided. I don't
14 know what assurance, the fact that you gave it to them, would
15 have on your being able to object to something that you gave
16 him. But ordinarily you've got to have -- you've got to have
17 it certified, or you've got to have somebody who is a
18 custodian of the record be here to verify it. You've just got
19 a document that the Government gave you, and here they are
20 objecting to admissibility because it's not certified.

21 MR. RICHARDSON: We'll withdraw our objection and
22 just ask the Court to admit it, and you weigh it for whatever
23 evidentiary value it might have.

24 THE COURT: That's a good solution.

25 MR. THEOS: Sounds like a good solution, and I'd just

1 point out that Mr. Schroepfer, Agent Schroepfer is here,
2 that's who apparently obtained the rap sheet, so --

3 THE COURT: Let me tell you something. I stopped you
4 several times yesterday, and I want you to -- you can not
5 cross-examine a witness on a document that he didn't prepare,
6 he's never seen, he doesn't know what -- he's never had
7 anything to do with it. You can't cross-examine him on that
8 document. You tried to do it several times yesterday. Now,
9 you can't -- if he's never seen it, and somebody else wrote
10 it, and it's never been shown to him and he hasn't verified
11 what's in there, and he doesn't know what somebody else wrote
12 down, you can't cross-examine him on it. And there's no way
13 you can do that.

14 Go ahead.

15 MR. THEOS: Your Honor, I assume I can cross-examine
16 him on any prior inconsistent statement that he's given to law
17 enforcement.

18 THE COURT: Well, but you can't use that as an
19 inconsistent statement. You can put the person up, but you
20 can't use a document to say he gave an inconsistent statement
21 when he's never seen the document, he didn't have anything to
22 do with the preparation of it, the people that prepared it are
23 not testifying. You can't use a document to show any
24 inconsistent statement. That doesn't show anything.

25 MR. THEOS: I didn't -- my intent was not to use the

1 document, my intent was to demonstrate that he had previously
2 given an inconsistent statement. And he can --

3 THE COURT: How do you know he gave an inconsistent
4 statement, when he hasn't seen the document, he didn't have
5 anything to do with drawing it up. The fellow who prepared it
6 is not here.

7 MR. THEOS: Well, the fellows that prepared it are
8 here, Judge, they're witnesses for the Government.

9 THE COURT: Well, then you can ask them.

10 MR. THEOS: Well, I don't -- Am I not allowed to ask
11 the witness whether he previously gave a statement that stated
12 A, B and C to the Government?

13 THE COURT: You can ask him if he told them, if he
14 told somebody that, yeah. But that's not what you were doing.
15 Just keep in mind that that statement can't be used in any way
16 as proof of what he said. Because he hasn't seen it, he
17 didn't prepare it, he doesn't know what's on it. The people
18 who prepared it are not here. They may be here, but they
19 haven't testified. And that statement -- you just can't do
20 that.

21 MR. THEOS: But you're not restricting me from asking
22 him whether he previously made the statement.

23 THE COURT: No. No. You can ask him if he made a
24 statement, you just can't hold that statement out and read
25 from it and then indicate that that's what he said.

NATHAN ROLLINS - DIRECT EXAMINATION

1 MR. THEOS: I understand your point, Judge.

2 THE COURT: All right, sir. Let's go.

3 MR. RICHARDSON: The Government calls Sergeant Nathan
4 Rollins.

5 MR. THEOS: With respect to the rap sheet we're going
6 to introduce, we will provide a clean copy either this
7 afternoon or tomorrow, and introduce it as Defendant's
8 exhibit. The copy that I have here today has got my notes on
9 it.

10 THE COURT: All right, sir.

11 THE CLERK: State your name for the record.

12 A. Nathan Rollins.

13 NATHAN ROLLINS, a witness called by the Government, first
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q. Tell us what you do.

18 A. I'm currently employed at the Berkeley County Sheriff's
19 Department, and I'm assigned to the K-9 unit. Been there for
20 approximately eight years.

21 Q. And what is your primary role with the K-9 unit at
22 Berkeley?

23 A. In the K-9 unit I conduct a lot of traffic stops, assist
24 narcotics, different agencies.

25 Q. Okay. We're going to sort of cut down to the important

NATHAN ROLLINS - DIRECT EXAMINATION

1 part of the day, all right, so March 19th of 2012, do you
2 remember where you were that day?

3 A. Yes.

4 Q. Tell us generally what your role was to be on March 19.

5 A. I was contacted by someone from the DEA Charleston office,
6 either the night before or the morning of March 19th, 2012, to
7 conduct a traffic stop utilizing my fully marked patrol
8 vehicle in Berkeley County.

9 Q. And that morning of March 19th, tell us what happened, how
10 did you identify what truck to stop and what did you do?

11 A. I believe it was approximately 8:00 o'clock in the morning
12 I was notified either via cell phone or radio, that agents
13 were conducting surveillance at a residence in Felder Creek
14 neighborhood, which is located in Berkeley County. I was
15 somewhere on Jedburg Road near the interstate.

16 They advised me that the vehicle left the residence and it
17 was occupied by the defendant, Martin Ballard. They gave me
18 the description of the vehicle, 2011 white in color GMC Sierra
19 pickup truck bearing a South Carolina license plate P439407.
20 And that it was heading in the direction of Dorchester County
21 on Jedburg Road.

22 I observed the vehicle pass my stationary location,
23 conducted a lawful traffic stop, it was just outside of
24 Berkeley County at the Dorchester County line, and it was
25 occupied by the defendant.

NATHAN ROLLINS - DIRECT EXAMINATION

1 Q. All right. After you made the traffic stop on the
2 vehicle, you approached the vehicle, and what did you do with
3 Mr. Ballard?

4 A. I conducted a passenger-side approach to the vehicle, and
5 through the window I observed the defendant, Martin Ballard,
6 in the driver's seat operating the truck. I also observed
7 two, maybe three young children in the vehicle.

8 Q. And what did you do at that point?

9 A. I requested Mr. -- the defendant to step to the back of
10 the vehicle where my patrol vehicle was. There was a two-lane
11 highway, there was a lot of morning traffic. There wasn't
12 enough room on the shoulder of the grass for, of course, a big
13 dually to pull over safely. So I asked him to step out to the
14 back of the truck. Advised him of his warrant and placed him
15 under arrest.

16 Q. Okay. And you mentioned the term dually. What kind of
17 truck was this that you pulled over?

18 A. It was a brand new very nice large white truck.

19 Q. When you refer to dually, means it has two tires on each
20 side on the rear axle?

21 A. Yes.

22 Q. After you placed Mr. Ballard under arrest, did other DEA
23 law enforcement officers show up at that point?

24 A. Yeah, I can't recall the number of agents that arrived on
25 scene, but they did arrive on scene to assist me.

NATHAN ROLLINS - DIRECT EXAMINATION

1 Q. At some point during that time did you search Martin
2 Ballard for what he had on his person, in his pockets, that he
3 had on him?

4 A. Search incident to arrest after Mr. Ballard was placed
5 into handcuffs, search of his person revealed clear plastic
6 bag containing white powder substance; in his pants pocket
7 there was an amount of currency; and multiple as cell phones.

8 MR. RICHARDSON: Permission to approach, Your Honor?

9 Q. I'm going to show you two exhibits, Government's
10 Exhibit 17 and Government Exhibit 18 B. You see those?

11 A. Yes.

12 Q. What is Government Exhibit 17?

13 A. Appears to be a white powder substance in a clear Ziploc
14 bag.

15 Q. And this was placed into evidence by Mike Maxwell, is
16 that -- Was he present during that stop?

17 A. He was, he was there assisting me.

18 Q. Okay. I'm going to show you Government's Exhibit 18 B.
19 And what are these?

20 A. Those are cell phones.

21 Q. Okay. And G S Mike Maxwell also placed those into
22 evidence on that day, March 19?

23 A. Yes.

24 Q. Okay. After the traffic stop -- well, before that, you
25 said you found some cash also; what did you do with that cash?

NATHAN ROLLINS - DIRECT EXAMINATION

1 A. All the contraband that was located at the time of his
2 arrest was placed on the hood of my patrol vehicle and it was
3 gathered and collected by DEA.

4 Q. Okay. Did you then subsequently assist with the search
5 warrant at Mr. Ballard's residence?

6 A. I did.

7 MR. RICHARDSON: Sergeant Rollins, if you have the
8 chance to answer any questions he has, I appreciate it.

9 A. Yes, sir.

10 (Brief interruption in proceedings.)

11 CROSS-EXAMINATION

12 BY MR. THEOS:

13 Q. Officer Rollins, when you first recognized the car, saw
14 the vehicle that you were supposed to pull over, did you turn
15 your siren on or your blue light?

16 A. The blue lights were activated.

17 Q. Okay. And Martin Ballard pulled over, did he not?

18 A. Yes.

19 Q. He didn't attempt to flee --

20 A. No.

21 Q. -- in his vehicle? Once he was pulled over he didn't
22 attempt to jump out of the car and run?

23 A. No.

24 Q. He didn't resist, he didn't resist you in any way?

25 A. No.

NATHAN ROLLINS - CROSS-EXAMINATION

1 Q. He cooperated fully with you, correct?

2 A. From myself and placing him in custody, yes.

3 Q. Okay. He wasn't combative in any fashion?

4 A. No.

5 Q. Wasn't threatening in any way?

6 A. No.

7 Q. And, in fact, when you asked him whether he had any
8 weapons or anything that could be considered dangerous in the
9 car, he told you that there was a handgun in the center
10 console of the vehicle, correct?

11 A. I don't recall if he asked me -- or if I asked him that
12 question or if a DEA agent asked him that question. But I
13 recall that question being asked and him answering and stating
14 that there was a firearm in the vehicle.

15 Q. So he wasn't trying to hide that fact, in other words.

16 A. No.

17 Q. Correct? And the handgun was found, was found in the
18 center console, correct?

19 A. I believe so. I don't recall myself searching the
20 vehicle; I stayed with the defendant.

21 Q. But you would agree with me that a handgun in a center
22 console is an appropriate place, a lawful place for a handgun
23 to be located or situated in a vehicle, correct?

24 A. Yes, back rear compartment would be lawful.

25 Q. So it was not being unlawfully transported?

NATHAN ROLLINS - CROSS-EXAMINATION

1 A. At the time of the arrest, no, it was not.

2 Q. And you heard Martin explain that this handgun was
3 registered to and belonged to his girlfriend, the mother of
4 one of his children, Miss Melissa McCleary. You heard him say
5 that, didn't you?

6 A. I do not recall that.

7 Q. You heard him also indicate that this vehicle was the
8 vehicle that was normally driven by his girlfriend, did you
9 not?

10 A. I do not recall that statement.

11 Q. You didn't hear that? The vehicle was registered to his
12 mother, was it not?

13 A. I don't recall. I don't have the registration in front of
14 me, so --

15 Q. Now, the cocaine that was seized, you testified, I believe
16 it was Exhibit No. 17, that cocaine was found in Martin's
17 pocket?

18 A. Correct.

19 Q. Pants pocket, jacket pocket, which pocket?

20 A. From what I recall, it was a pants pocket.

21 Q. And Martin didn't resist your discovery or your seizure of
22 that cocaine, did he?

23 A. No.

24 Q. The cocaine that was found, which is again marked as
25 Exhibit 17, that was approximately one gram of cocaine?

NATHAN ROLLINS - CROSS-EXAMINATION

1 A. Approximately.

2 Q. And that cocaine was packaged in one clear plastic baggie,
3 as it's seen here today in the courtroom?

4 A. I don't recall how many times it was packaged, I remember
5 it was in a clear plastic baggie. I don't know if it was
6 wrapped in several or --

7 Q. Well, you testified on direct that it was in one clear
8 plastic baggie. And that's consistent with how it is shown
9 here in this exhibit, correct?

10 A. This exhibit, there's one clear plastic baggie like a
11 sandwich bag and a white powder substance.

12 Q. All right. So again, the cocaine found in Martin's pocket
13 was in one clear plastic baggie, correct?

14 A. Yes.

15 Q. And there was nothing found in the vehicle, there weren't
16 any scales found in the vehicle, there weren't any other clear
17 plastic baggies that were found in the vehicle, correct?

18 A. I did not search the truck. I was standing with the
19 defendant on the side of the road while he was in custody.

20 Q. So I guess my point is there was nothing found in the
21 vehicle which would indicate that this cocaine was for
22 anything other than Martin's personal --

23 MR. RICHARDSON: Objection, Your Honor. He's already
24 said he didn't search the truck, so there's no foundation for
25 that question.

NATHAN ROLLINS - CROSS-EXAMINATION

1 MR. THEOS: I asked a different question, Judge.

2 THE COURT: Ask the question again.

3 BY MR. THEOS:

4 Q. There was nothing in the vehicle that was consistent with
5 Martin having this cocaine for any use other than personal
6 use, correct?

7 A. I did not search the truck. So I haven't seen any
8 evidence or tow sheets stating what the inventory of the
9 vehicle -- I don't know.

10 Q. Now, you testified about the cell phones that were found
11 in the vehicle, and that was Exhibit 18 B. Correct? Did you
12 find the --

13 MR. RICHARDSON: Objection, Your Honor, he's
14 misstating the record. Those weren't found in the vehicle,
15 those were found on his person.

16 THE COURT: Go ahead.

17 BY MR. THEOS:

18 Q. Regardless of whether they were found on his person or in
19 the vehicle, did you take possession of those cell phones?

20 A. I removed several cell phones, approximately six, from his
21 person.

22 Q. All right. And you indicated before that he had two or
23 three children, two or three children in the vehicle with him,
24 correct?

25 A. There were children, yes.

NATHAN ROLLINS - CROSS-EXAMINATION

1 Q. And this was early in the morning, correct?

2 A. Yes, approximately 8:00 a.m.

3 Q. And he was, he told you he was taking these children to
4 school, did he not?

5 A. I recall him telling me that he was taking them to
6 Walterboro.

7 Q. And he told you that three of the phones were his
8 children's phones, and that he did not allow the children to
9 take the phones into school, did he not?

10 A. I do not recall him making that statement.

11 Q. No.

12 THE COURT: What was your answer to that question?

13 A. I don't recall him ever stating that the phones belonged
14 to the children.

15 THE COURT: All right, sir.

16 Q. The cash that you referenced, that cash was found on
17 Mr. Ballard?

18 A. Yes.

19 Q. And it was found in his wallet or his pocket, loosely?
20 Can you describe it, please?

21 A. From what I remember is that the money was loose, there
22 was some in the wallet, some in his pockets. And just
23 pertaining to the report, it states that there was a
24 counterfeit \$100 bill in his wallet.

25 Q. But the cash was not -- the cash that was found was not

NATHAN ROLLINS - CROSS-EXAMINATION

1 held together by a rubber band, or it wasn't in any sort of
2 plastic bag of some sort, it was just on his person, as would
3 normally be carried by any individual, correct?

4 A. I don't recall the denominations of the currency. I don't
5 recall -- it was not in a plastic bag, whether it was rubber
6 banded or not, I don't remember if it was or not rubber
7 banded.

8 Q. It wasn't anything unusual about how it was packaged, is
9 my point, isn't that correct? Otherwise you would have noted
10 it.

11 A. Correct.

12 MR. THEOS: No other questions, Judge.

13 THE COURT: Anything else, Mr. Richardson?

14 MR. RICHARDSON: Just one, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q. Approximately how old were the children, Sergeant?

18 A. Ages two to four?

19 MR. RICHARDSON: Thank you. Nothing further, Your
20 Honor.

21 THE COURT: All right, sir, you may be excused.

22 MR. RICHARDSON: Your Honor, the Government calls
23 Michael Maxwell.

24 THE CLERK: State your name for the record.

25 A. Michael Maxwell.

MICHAEL MAXWELL - DIRECT EXAMINATION

1 MICHAEL MAXWELL, a witness called by the Government, first
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. RICHARDSON:

5 Q. Tell us briefly where you work and what you do.

6 A. I'm a supervisory special agent for the Drug Enforcement
7 Administration. I'm currently stationed in the Hague,
8 Netherlands.

9 Q. And when did you return to South Carolina from the
10 Netherlands?

11 A. Last night.

12 Q. We appreciate you flying in for this. Tell us when -- in
13 March of 2012, tell us what your role was then, where were you
14 stationed and what was your role?

15 A. I was the group supervisor of the Charleston DEA task
16 force.

17 Q. And on March the 19th of 2012, tell us what the plan was
18 for that morning and what your role in it was.

19 A. That morning we had a federal arrest warrant for Martin
20 Ballard. We established surveillance at his residence, and
21 the plan was to execute the arrest warrant on Mr. Ballard when
22 he departed his residence.

23 Q. And then what happened?

24 A. So surveillance indicated that Mr. Ballard had gotten into
25 his vehicle with two small children, and departed his

MICHAEL MAXWELL - DIRECT EXAMINATION

1 residence. Deputy Rollins from Berkeley County initiated a
2 traffic stop in his marked patrol vehicle, and placed
3 Mr. Ballard under arrest.

4 Q. And when did you arrive in relation to when the car was
5 stopped?

6 A. I arrived shortly after he placed Mr. Ballard in custody,
7 in handcuffs, I believe.

8 Q. And once he was placed in custody, tell us what did you
9 ask Mr. Ballard?

10 A. I was concerned because there were two small children in
11 the vehicle. I asked Mr. Ballard if there were any weapons in
12 the vehicle that the children might get ahold of and harm
13 themselves with. He said there was a firearm in the center
14 console of the vehicle. I walked up to the vehicle, I secured
15 the firearm.

16 Q. Okay. Your Honor, may I approach? I'm going to show you
17 Government Exhibit 16 A. Do you recognize that?

18 A. Yes, sir, I do.

19 Q. I'm also going to show you, while we're here, 16 B and C.
20 You see these?

21 A. Yes, sir.

22 Q. You recognize those as well?

23 A. Yes, sir, I do.

24 Q. What is Government's Exhibit 16 A?

25 A. It's a Taurus nine millimeter handgun that was found in

MICHAEL MAXWELL - DIRECT EXAMINATION

1 the center console of Mr. Ballard's vehicle.

2 THE COURT: Tell me again what that is.

3 A. That's a nine -- Taurus nine millimeter handgun that was
4 found in the -- Mr. Ballard's vehicle in the center console.

5 THE COURT: All right, sir.

6 Q. And this is the firearm that Mr. Ballard told you was in
7 the center console?

8 A. Yes, sir.

9 Q. And then Government Exhibit 16 B and C, this is the
10 magazine and the rounds that were loaded into that gun?

11 A. As I secured the firearm, there was one round in the
12 chamber, the hammer was in the cocked position.

13 THE COURT: You said there was a round in the
14 chamber?

15 A. Yes, Your Honor. I ejected the round, ejected the
16 magazine, unloaded the firearm.

17 Q. When you mentioned that the hammer was in the cocked
18 position, what does that mean?

19 A. So that type of weapon, there's what's called a long pull
20 and short pull. The long pull causes the first round to send
21 the round out of the chamber, leaving the last -- leaving the
22 hammer in the cocked position. And that's just a very short
23 pull, a very small touch of the trigger to get the next round
24 to come out.

25 Q. So when the hammer's cocked, it's ready to fire really

MICHAEL MAXWELL - DIRECT EXAMINATION

1 easily?

2 A. It's ready to fire very easily.

3 Q. Were you also present for the search of Mr. Ballard's
4 person?

5 A. Yes.

6 Q. And what did you see -- did you conduct the search or did
7 you just observe it?

8 A. I just observed it.

9 Q. And what did you see found on the defendant?

10 A. Approximately six cell phones, a cellophane baggie
11 containing a white powdery substance, and a wallet, I believe.

12 Q. Okay. And was there cash found?

13 A. There was approximately \$1900 cash found.

14 Q. Showing you just briefly Government Exhibit 17 that you
15 placed into evidence, is that the cocaine that was found on
16 Mr. Ballard?

17 A. Yes, sir, it is.

18 Q. And Government Exhibit 18 B that you also placed into
19 evidence.

20 A. Yes, sir.

21 Q. Are those the six cell phones that were found in
22 Mr. Ballard's pockets?

23 A. Yes, sir.

24 Q. Did you also then participate in the search of the white
25 dually pickup truck that Mr. Ballard was driving?

MICHAEL MAXWELL - DIRECT EXAMINATION

1 A. Yes.

2 Q. And tell me just briefly, not everything that was found,
3 but did you find any cell phones during that search?

4 A. There were several cell phones found inside the vehicle.

5 Q. And then what about any shell casings, did you find any
6 shell casings?

7 A. I believe that there was a shell casing that was found
8 between the window and the molding of the vehicle, the front
9 window and the molding of the vehicle.

10 Q. Sort of by where the windshield wipers are?

11 A. By where the windshield wipers are, yes.

12 Q. And then did you also participate in a search of the
13 residence, Martin Ballard's house?

14 A. Yes, sir.

15 MR. RICHARDSON: Mr. Maxwell, if you just answer any
16 questions that Mr. Theos might have, I'd appreciate it.

17 A. Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. THEOS:

20 Q. Agent Maxwell, when you arrived at the scene and began
21 speaking with Martin Ballard, he wasn't combative in any way,
22 was he?

23 A. No, sir.

24 Q. Wasn't belligerent in any way?

25 A. No, sir.

MICHAEL MAXWELL - CROSS-EXAMINATION

1 Q. Cooperated fully with you?

2 A. Yes, sir.

3 Q. And when you asked him whether or not there were any
4 weapons or any dangerous devices in the vehicle, he
5 immediately told you about the handgun, correct?

6 A. Yes, sir.

7 Q. And he told you where the handgun was located?

8 A. Yes, sir.

9 Q. And it was located in the center console of the vehicle,
10 is that correct?

11 A. Yes, sir.

12 Q. And that is a lawful place for a weapon or a handgun to be
13 transported in a vehicle, correct?

14 A. I believe so, sir.

15 Q. So that would not be in violation of any law, correct?

16 A. No, sir.

17 Q. And he told you that that handgun was registered to his
18 girlfriend, Melissa McCleary, did he not?

19 A. I don't recall having that conversation with him, sir.

20 Q. All right. Might he have told you that and you just don't
21 recall?

22 A. I don't remember. I remember the conversation as I walked
23 back to the police car. And we identify ourselves as federal
24 agents. Mr. Ballard said he knew who we were, and he had
25 friends in jail, and they're okay. That's the only --

MICHAEL MAXWELL - CROSS-EXAMINATION

1 Q. Let me ask you this. Did you ultimately run a check on
2 the handgun to determine to whom it was registered?

3 A. I did not, no.

4 Q. Do you know who did that?

5 A. No, sir, I don't.

6 Q. Do you know that the result -- do you know what the
7 results of that investigation were?

8 A. I'm not aware.

9 Q. Now, the cocaine was seized, you've already stated it was
10 in this one clear plastic baggie, which is Exhibit 17.
11 Correct?

12 A. I believe it was Exhibit 8. Yes.

13 Q. Exhibit 17 --

14 A. Yes, sir, I'm sorry.

15 Q. Okay.

16 A. Government's Exhibit 17, yes, sir, DEA Exhibit 8.

17 Q. And it was found in one clear plastic baggie, correct?

18 A. Yes.

19 Q. And it was in Martin's pocket, correct?

20 A. Yes.

21 Q. Martin didn't do anything to attempt to conceal the fact
22 that he had cocaine on him?

23 A. No, sir.

24 Q. And the cocaine was packaged in a fashion that was
25 consistent with personal use and not distribution, correct?

MICHAEL MAXWELL - CROSS-EXAMINATION

1 A. Yes, sir, that's correct.

2 Q. Now, the firearm in question, is this it?

3 A. Yes, sir.

4 Q. And this is Exhibit 16 A.

5 A. Yes, sir.

6 Q. I'm not real familiar with firearms, but does this firearm
7 have a safety device on it?

8 A. Yes, sir, I believe it does. Here, it's located here.

9 Q. And is that safety device now in the on position or off
10 position?

11 A. It's in the fire position.

12 THE COURT: It's in what?

13 A. I believe it's in the fire position now, sir.

14 Q. Which means it's in the off position, so to speak?

15 A. It's in the position where if the hammer was -- if the
16 hammer was released, if there was a full magazine placed
17 inside the gun and the slide was released, it would be ready
18 to fire.

19 Q. And can you manipulate that safety mechanism so that it's
20 in the on position or safety position?

21 A. Yes, sir.

22 Q. To demonstrate it for us?

23 A. Well, I would have to take the safety lock off as well as
24 the tie restraint.

25 Q. So just so you can explain it to the Court, how would you

MICHAEL MAXWELL - CROSS-EXAMINATION

1 activate it?

2 A. This lever to the back of the weapon would --

3 THE COURT: You have the gun between your head.

4 A. I'm sorry, Your Honor. This lever would be flipped up,
5 and be resting against this portion of the slide.

6 Q. So it would be in sort of the exact opposite position that
7 it is now?

8 A. Yes, it would be in a vertical position.

9 Q. Vertical position?

10 A. Yes, sir.

11 Q. And when this pistol was seized, the safety device was on
12 in the vertical position, was it not?

13 A. Yes, sir, it was.

14 Q. So it was not ready to fire, it was -- the safety device
15 was on?

16 A. Safety device was on.

17 Q. So it couldn't have been fired unless the safety device
18 was turned off?

19 A. That's correct.

20 MR. THEOS: No other questions, Judge.

21 THE COURT: Mr. Richardson, anything else?

22 MR. RICHARDSON: One quick question, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q. If you were holding that firearm, how long would it take

MICHAEL MAXWELL - CROSS-EXAMINATION

1 you to change the safety?

2 A. Very very fast. Not even a second.

3 Q. It's set up so you flip it with your thumb?

4 A. Flip it with your thumb and get a round off very quickly.

5 MR. RICHARDSON: Nothing further for this witness.

6 MR. THEOS: Your Honor, I have one final question.

7 RECROSS-EXAMINATION

8 BY MR. THEOS:

9 Q. The vehicle itself, it was registered to Martin Ballard's
10 mother, was it not?

11 A. I believe so, yes, sir.

12 THE COURT: That everything?

13 MR. RICHARDSON: That's everything, Your Honor.

14 THE COURT: You may be excused.

15 MR. RICHARDSON: Your Honor, the Government calls
16 Task Force Officer Michael Crumley.

17 THE COURT: Mr. Theos, I'm not keeping these
18 witnesses. If you want any of them kept, you let me know.

19 MR. THEOS: Yes, sir, thank you, Judge, I will.

20 THE CLERK: State your name.

21 A. Michael Crumley.

22 MICHAEL CRUMLEY, a witness called by the Government, first
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

MICHAEL CRUMLEY - DIRECT EXAMINATION

1 Q. Officer Crumley, tell us where you work and what you do.

2 A. I work at the Berkeley County sheriff's office. I work in
3 the Office of Professional Standards, I'm a polygraph examiner
4 and I work in internal affairs.

5 Q. And what is your current rank with the sheriff's office?

6 A. I'm a lieutenant.

7 Q. Lieutenant, in March of 2012, what was your role within
8 the sheriff's office and otherwise, what were you doing at
9 that point?

10 A. At that point I was a corporal, I was assigned to U.S.
11 Drug Enforcement Administration as a task force officer. I
12 represented and assisted there.

13 Q. I want to focus in on a very narrow set of circumstances
14 for you. On March the 19th were you involved in the traffic
15 stop and arrest of Martin Ballard?

16 A. Yes.

17 Q. After the traffic stop was effected, how long after before
18 you showed up?

19 A. It was pretty much immediate.

20 Q. And what was your role during the arrest and subsequent
21 search of Mr. Ballard? What did you do?

22 A. So I was part of that traffic stop on a shoulder of the
23 road which is on Jedburg Road right about where the interstate
24 interchange is. And so I pulled over behind the marked patrol
25 vehicle and just stood by and witnessed what went on as Martin

MICHAEL CRUMLEY - DIRECT EXAMINATION

1 Ballard was taken into custody.

2 Q. Okay. Were there anybody else present other than
3 Mr. Ballard in the truck when it was stopped?

4 A. I believe there were some minor children, too, I believe.

5 Q. And how were they handled? Were they old enough to take
6 care of themselves?

7 A. No.

8 Q. Roughly how old were they? I know that's a hard thing to
9 guess, but --

10 A. I want to recall they were maybe around four years of age.
11 Ballpark figure there.

12 Q. Ballpark?

13 A. Right.

14 Q. I won't hold you to guessing ages, I promise. After the
15 arrest of Mr. Ballard, what did you do with those children?
16 Where were they -- how were they handled?

17 A. Well, I believe the children remained in the vehicle, and
18 I know an adult was summoned to the location to take custody
19 of them.

20 Q. Okay. I'm going to show you Government's Exhibit 20.
21 During the search of the outside of Mr. Ballard's white dually
22 pickup truck, do you recognize this item as having been found?

23 A. Yes.

24 Q. And what is Government's Exhibit 20 that was found on the
25 outside of Mr. Ballard's truck?

MICHAEL CRUMLEY - DIRECT EXAMINATION

1 A. That's a spent shell casing. I believe it's a
2 nine-millimeter, it's been fired. Yes, it's a spent
3 nine-millimeter shell casing.

4 Q. After the traffic stop, I'm not going to belabor
5 everything you did that day, I'm just trying to hit a few
6 things to piece the story together. But after March the 19th,
7 how were you involved in connection with the money that was
8 found in Mr. Ballard's pocket?

9 A. All right. So the money that was found in his pocket was
10 seized that day and secured in the non-drug evidence locker at
11 the DEA office. On the 22nd, March 22nd, I went and obtained
12 that money that was sealed in a DEA evidence bag from the
13 evidence custodian, and I took that and seized it on a state
14 level. And I took the bag, opened the bag in front of my
15 supervisor, counted the money.

16 Q. And then after you counted it, what did you do with it?

17 A. That money was subsequently deposited into the sheriff's
18 office account, seizure account. And then forfeiture
19 proceedings were brought in the Circuit Court in Berkeley
20 County.

21 Q. In preparing that money did you also prepare a sheet
22 that -- describing the type of bills that were found and the
23 total amount of money that was located?

24 A. Yes.

25 Q. And the total amount of money was \$1976?

MICHAEL CRUMLEY - DIRECT EXAMINATION

1 A. Yes.

2 Q. And it had three hundred dollar bills and ten fifty dollar
3 bills?

4 A. That's correct.

5 Q. And then a number of smaller bills.

6 A. That's correct.

7 MR. RICHARDSON: Lieutenant Crumley, if you just
8 answer any questions that Mr. Theos might have, I'd appreciate
9 it.

10 A. Certainly.

11 MR. THEOS: I don't have any questions, Judge.

12 THE COURT: All right. You people weren't going to
13 let the feds get that money, were you?

14 A. They were gracious.

15 THE COURT: You may be excused.

16 MR. RICHARDSON: They didn't offer it to me, Your
17 Honor.

18 The Government calls Matt Simonetti.

19 THE CLERK: State your name for the record, please.

20 A. Matthew P. Simonetti.

21 MATTHEW SIMONETTI, a witness called by the Government,
22 first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q. Officer Simonetti, tell us where you work and what you do.

MATTHEW SIMONETTI - DIRECT EXAMINATION

1 A. I'm currently employed with the Summerville police
2 department as a detective corporal, and I'm assigned to the
3 DEA as a task force officer.

4 Q. And in March of 2012, you were also a task force officer
5 with the DEA.

6 A. Correct.

7 Q. And were you involved in the traffic stop and subsequent
8 search of Mr. Ballard, his vehicle and his house?

9 A. Correct.

10 Q. That was on March the 19th. Tell me just briefly what was
11 your role that day, what did you do?

12 A. I established surveillance on Mr. Ballard's residence,
13 prior to the briefing of the rest of the officers, just to
14 make sure that Mr. Ballard still remained in the residence.
15 If he were to depart, I was to advise the other officers that
16 he was leaving, direction of travel, and anything else that
17 was pertinent.

18 Q. And what did you see that morning?

19 A. I established a position close to Mr. Ballard's residence,
20 sat there for a little while. Observed Mr. Ballard exit the
21 residence, go to his pickup truck, start it up, go back into
22 his residence, and a short time later he exited with two
23 children, got into the vehicle, departed the residence towards
24 Jedburg Road.

25 Q. And what type of vehicle was it?

MATTHEW SIMONETTI - DIRECT EXAMINATION

1 A. It was a white GMC pickup truck with a dually.

2 Q. Were you familiar with that pickup truck prior to that
3 day?

4 A. I was.

5 Q. How were you familiar with that light dually pickup truck
6 prior to March 19th?

7 A. Prior surveillances; also just obtaining the information
8 from the case agents.

9 Q. And prior surveillances, who had been observed driving
10 that truck?

11 A. Mr. Ballard.

12 Q. Okay. After Mr. Ballard was stopped -- Let me back up.
13 What information did you provide to Deputy Rollins about the
14 vehicle, where it was going and why it was stopped.

15 A. I didn't provide any of that information. The officers
16 were already aware that Mr. Ballard had an arrest warrant. I
17 advised when he was departing the residence, and that the
18 children were inside of the vehicle and which direction that
19 they were traveling.

20 Q. Okay. After the stop occurred, did you go to the scene of
21 the traffic stop?

22 A. I did.

23 Q. And while you were there, were you involved in the
24 subsequent search? Were you involved in the subsequent search
25 of the vehicle?

MATTHEW SIMONETTI - DIRECT EXAMINATION

1 A. I was.

2 Q. And I'm going to show you what's been previously marked as
3 Government's Exhibit 18A. Do you recognize those items?

4 A. Yes, I do.

5 Q. And what are they?

6 A. They are cell phones and cell phone chargers.

7 Q. And where were these five cell phones located?

8 A. Inside of the vehicle.

9 Q. And they're separate from the six that were found on his
10 person?

11 A. Correct.

12 THE COURT: Where were those found?

13 A. In multiple spots within the vehicle. Some were in this
14 center console, some were on the driver's seat, passenger's
15 seat, just various locations.

16 Q. Were any of these cell phones found in the pockets of the
17 children that were in the car?

18 A. No.

19 Q. With respect to Mr. Ballard's house, what was your role in
20 that search?

21 A. I was to photograph the residence prior to the residence
22 being searched. I was also to photograph anything of
23 evidentiary value, prior to it being moved. And then I was
24 also the seizing -- not the seizing agent, but the acquiring
25 agent. And then my role was to give it to Task Force Officer

MATTHEW SIMONETTI - DIRECT EXAMINATION

1 Crumley, who was going to wind up being the seizing agent.

2 Q. I'm going to show you just a handful of items that were
3 seized from the house. This is a little heavy.

4 A. Yeah.

5 Q. Do you recognize that item?

6 A. I do.

7 Q. Okay. And was that one of the items that you seized from
8 Martin Ballard's house?

9 A. That is one of the items that I acquired.

10 Q. And why is it that you seized this item?

11 A. That item is what we call a kilogram press or a kilo
12 press. It's a homemade device that's used to compress
13 cocaine.

14 Q. And how is that item used to compress cocaine?

15 A. With this particular press they would usually use some
16 type of weight in order to press the cocaine down. Some other
17 presses use jacks in order to provide some force to make
18 everything nice and tight.

19 Q. And in doing that, that helps create that solid brick of
20 cocaine?

21 A. Correct.

22 Q. I'm going to show you Government's Exhibit 21, and what
23 are these items in Government's Exhibit 21?

24 A. More cell phones.

25 Q. Okay. And where were these cell phones located?

MATTHEW SIMONETTI - DIRECT EXAMINATION

1 A. These would have been found inside of the -- Mr. Ballard's
2 residence.

3 Q. And I'm going to show you Government's Exhibit 21 C; and
4 what is this?

5 A. It's a box of miscellaneous paperwork from inside of
6 Mr. Ballard's residence.

7 THE COURT: Box of what?

8 A. Miscellaneous paperwork.

9 Q. Financial records, receipts, those sorts of things?

10 A. Correct.

11 MR. RICHARDSON: If you would answer any questions,
12 Detective Simonetti, that Mr. Theos might have, I'd appreciate
13 it.

14 CROSS-EXAMINATION

15 BY MR. THEOS:

16 Q. Mr. Simonetti, who else resided in the residence with
17 Mr. Ballard -- Well, first of all, what was the residence
18 address that you had under surveillance?

19 A. I believe it was -- and it's been several years now,
20 correct me if I'm wrong -- I believe it was 106 Springview?
21 Something like that.

22 Q. And where is that located?

23 A. It's in the Felder Creek subdivision in Summerville on the
24 Berkeley County side.

25 Q. All right. And residing in that residence with Martin

MATTHEW SIMONETTI - CROSS-EXAMINATION

1 Ballard were his children? And otherwise -- Were they not?

2 A. Yes.

3 Q. And also his girlfriend, Melissa McCleary, who is the
4 mother of one of his children, correct?

5 A. As far as I'm aware, yes.

6 Q. Now, the cell phones, I believe it was Exhibit 18 A that
7 you testified about a few minutes ago, those cell phones that
8 were as you stated that were found in various locations of the
9 vehicle, those cell phones, none of them were activated, isn't
10 that correct?

11 A. I have no idea if they were activated or not. I did not
12 see if they had power to them; they were collected and placed
13 into evidence.

14 Q. So you don't know whether they were operational or not?

15 A. I have no idea.

16 Q. Now, with respect to the cell phones that you testified
17 about that were found in the house, and I believe that was
18 18 A? Mr. Simonetti, Government's Exhibit 21 B, which you
19 testified about earlier, those cell phones were the cell
20 phones that were found in the residence?

21 A. Correct.

22 Q. And with respect to those cell phones, you're aware of the
23 fact that they also were not operational and they were not
24 phones that were activated.

25 A. I am not aware if they were functional, activated or not.

MATTHEW SIMONETTI - CROSS-EXAMINATION

1 Q. And to your knowledge, there was no -- do you know whether
2 any check was done to determine whether these phones were
3 active, or just old phones that were laying around the house?

4 A. I -- if they were, it wasn't done by me.

5 Q. Now, with respect to the cocaine, or as you put it, the
6 kilo press that was found, and this is Exhibit 21 A, that was
7 found in a garage, is that right?

8 A. Correct.

9 Q. And the garage is positioned where with respect to the
10 living quarters?

11 A. If you're looking at the front of the residence, it's
12 forward and to the left of the living quarters.

13 Q. And as you said, in order for a kilo press to be
14 operational so that it can -- as Mr. Richardson put it, so
15 that it can press the drugs to form this brick of cocaine, in
16 order for it to be operational, there either must be a
17 hydraulic jack that would provide the pressure necessary to
18 form the brick, or a weight of significant -- a significant
19 weight to enable this to be operational, correct?

20 A. I would agree that it would take some type of jack and
21 some type of weight.

22 Q. Now, there was no weight or jack found with this kilo
23 press, as you put it, was there?

24 A. With this particular press, no, there was no weight or
25 jack found.

MATTHEW SIMONETTI - REDIRECT EXAMINATION

1 Q. Therefore, this kilo press, as it was found and as it sits
2 here today, is not operational, is it?

3 A. No, it wouldn't be.

4 MR. THEOS: No other questions, Judge.

5 MR. RICHARDSON: Quick follow-up.

6 REDIRECT EXAMINATION

7 BY MR. RICHARDSON:

8 Q. Detective Simonetti, when we talk about a jack, do you
9 have a jack in your car?

10 A. I do.

11 Q. What do you use that jack for in your car?

12 A. To jack up my vehicle if I need to change a tire.

13 Q. Have you ever seen a vehicle that did not have a hydraulic
14 jack in that car?

15 A. I have seen vehicles without a hydraulic jack inside of
16 the vehicle.

17 Q. And every car that you've ever had, had a hydraulic jack
18 in it?

19 A. It did not have a hydraulic jack, it had some other kind
20 of jack.

21 Q. Has a jack of some sort?

22 A. Correct.

23 Q. Bad question. But cars, all cars have a jack in it in
24 case they have a flat tire, right?

25 A. Usually, yes.

MATTHEW SIMONETTI - RECROSS-EXAMINATION

1 MR. RICHARDSON: Nothing further.

2 RECROSS-EXAMINATION

3 BY MR. THEOS:

4 Q. Mr. Simonetti, there's a big difference between a car jack
5 and a hydraulic jack that would be necessary to operate this
6 kilo press, isn't there?

7 A. I'm not going to argue semantics, nor am I going to argue
8 how much force a standard jack nor a hydraulic jack places
9 when it's trying to compress nor lift. I'm not a physicist,
10 so I wouldn't know.

11 Q. I understand and I appreciate that. But you stand on your
12 testimony that for this to be operational, the hydraulic jack
13 would be necessary, right?

14 A. I believe I said it would need a jack or weight.

15 MR. THEOS: No other questions, Judge.

16 THE COURT: Let me ask you. Would an ordinary car
17 jack, could you use that to operate this thing?

18 A. You could use a standard car jack, I just don't know if a
19 standard car jack would give enough pressure to compress.

20 THE COURT: You could fit it in there. It would fit
21 around there to press some?

22 A. It could. Depending on the particular type of jack, since
23 there's so many variations of jacks.

24 THE COURT: All right, sir, go ahead. Any other
25 questions? All right. You may be excused. Thank you.

HELEN CREEL - DIRECT EXAMINATION

1 MR. RICHARDSON: Your Honor, the Government calls
2 Helen Creel.

3 MR. THEOS: Your Honor, could we take a five minute
4 break, please?

5 THE COURT: Maybe ten.

6 (A recess was held at this time.)

7 MR. RICHARDSON: The Government calls Helen Creel.

8 THE CLERK: State your name for the record.

9 A. Helen Creel.

10 HELEN CREEL, a witness called by the Government, first
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q. Morning, Miss Creel, how are you doing today?

15 A. I'm doing well; thank you.

16 Q. A little nervous?

17 A. Yes.

18 Q. You look like you are. It will be all right. Tell me
19 where did you grow up?

20 A. In Summerville, South Carolina.

21 Q. And did you graduate from high school there?

22 A. I did.

23 Q. What did you do after high school?

24 A. I went to the College of Charleston.

25 Q. What kind of work do you do now, Miss Creel?

HELEN CREEL - DIRECT EXAMINATION

1 A. I'm a paralegal at a civil firm here in Charleston.

2 Q. And prior to becoming a paralegal, what kind of work did
3 you do before that?

4 A. I worked at T Mobile and another call center, and also the
5 solicitor's office for the First Judicial Circuit.

6 Q. That's here in Charleston?

7 A. In Charleston.

8 Q. All right. Have you got kids?

9 A. I do.

10 Q. How old are they?

11 A. Thirteen, seven and six.

12 Q. And you've previously married but divorced now?

13 A. That is correct.

14 Q. In 2012 do you recall entering into a proffer agreement
15 with the Government?

16 A. Yes, I do.

17 Q. I'm going to hand you Government Exhibit 10 F. Do you
18 recognize that one?

19 A. Yes, sir, I do.

20 Q. Is that your signature on the last page?

21 A. Yes, sir, it is.

22 Q. And tell us what your understanding of that proffer
23 agreement is, what's it require you to do?

24 A. To tell the truth.

25 Q. Okay. Do you know Martin Ballard?

HELEN CREEL - DIRECT EXAMINATION

1 A. Yes.

2 Q. Do you see him here in the courtroom?

3 A. Yes, I do.

4 Q. And can you describe where he's sitting?

5 A. He's sitting over to the right side of the room.

6 Q. How did you first know Martin?

7 A. I went to high school with Martin.

8 Q. At Summerville High?

9 A. At Summerville High School.

10 Q. Did y'all graduate together about the same time?

11 A. No, we didn't.

12 Q. In between when you graduated from high school and 2011,
13 did you have any dealings or interactions with Mr. Ballard?

14 A. No, sir.

15 Q. Tell me how in 2011 you became reacquainted and got back
16 up knowing Mr. Ballard.

17 A. I was driving down Boone Hill Road, and he was pulling out
18 of a gas station and we met up at a stoplight.

19 Q. And when he pulled up beside you, rolled down the window,
20 did you recognize him then?

21 A. I did.

22 Q. Tell me what happened. During that meeting, what
23 occurred?

24 A. We just exchanged phone numbers.

25 Q. And subsequent to that did you get a phone call from him?

HELEN CREEL - DIRECT EXAMINATION

1 A. About two weeks later, yeah.

2 Q. And as a result of that phone call, what did you do?

3 A. We went to dinner.

4 Q. Where did you go to eat?

5 A. We went to California Dreaming.

6 Q. And did he pick you up?

7 A. Yes, he did.

8 Q. What was he driving when he picked you up?

9 A. A silver Mercedes.

10 Q. Although we'll get to it, during the course of your
11 interactions with Mr. Ballard -- in the course of your
12 interactions with Mr. Ballard did you see him driving other
13 vehicles?

14 A. I saw him driving a Dodge Ram.

15 Q. And what other cars did you know he had?

16 A. Like an old school car with -- older model car with rims.

17 Q. Talk about rims, you mean that are inside the wheels?

18 A. Yes.

19 Q. Were they larger than normal?

20 A. Yes.

21 Q. Okay. And is it convertible?

22 A. Yes, sir.

23 Q. After dinner -- That was the first date you'd been on,
24 right?

25 A. Yes.

HELEN CREEL - DIRECT EXAMINATION

1 Q. After dinner that night, what did he give you for your
2 birthday?

3 A. We -- he gave me some money so that I could go shopping.

4 Q. And how much money did he give you?

5 A. Approximately \$600.

6 Q. How long after that did you see Martin again?

7 A. It was about another two weeks.

8 Q. And where did you go to see him at that time?

9 A. He came to my apartment.

10 Q. And when he came to your apartment, I don't want to go
11 into every detail about it, but what did he subsequently leave
12 to go get?

13 A. He came back with cocaine.

14 Q. So how did cocaine come up during the course of your
15 conversation?

16 A. We were discussing my ex-husband, and he had heard that my
17 ex-husband used drugs, and asked if I had ever, you know, used
18 drugs with him.

19 Q. Okay. And had you used cocaine before?

20 A. Yes.

21 Q. When did you first start using cocaine?

22 A. Around 2006.

23 Q. And at the time you met back up with Mr. Ballard in 2011,
24 were you still using cocaine at that point?

25 A. No, I wasn't.

HELEN CREEL - DIRECT EXAMINATION

1 Q. When had you stopped?

2 A. I had stopped at the beginning of 2011, around January.

3 Q. And you met up with Mr. Ballard when, in --

4 A. May of 2011.

5 Q. And after you had that conversation with Mr. Ballard about
6 cocaine, what happened? What did he do?

7 A. He said that he had to leave for a minute, but he would be
8 back.

9 Q. Okay. And when he came back, what did he have?

10 A. Some cocaine.

11 Q. And what did he do with the cocaine?

12 A. He gave it to me. To try.

13 Q. And what did you do with the cocaine?

14 A. I used it.

15 Q. And this is powder cocaine, right?

16 A. Yes, powder cocaine.

17 Q. Did Mr. Ballard use the cocaine?

18 A. No, he didn't.

19 Q. During all the time that you spent with Mr. Ballard, did
20 you ever see him use cocaine?

21 A. No, I did not.

22 Q. Were you with Mr. Ballard and other people where other
23 people were using cocaine?

24 A. Yes.

25 Q. And in spite of that, you never saw him use cocaine at

HELEN CREEL - DIRECT EXAMINATION

1 all?

2 A. I never saw him use cocaine.

3 Q. After that meeting with Mr. Ballard, at your apartment
4 where you got cocaine from him then, did you continue getting
5 cocaine from Martin?

6 A. I did.

7 Q. And what kind of quantities of cocaine were you getting
8 from him?

9 A. Approximately half a gram to a gram.

10 Q. And how often were you getting a half a gram or a gram of
11 cocaine from Martin Ballard?

12 A. Every one to two weeks.

13 Q. And how long did that last? You met him in May of 2011;
14 how long did you continue getting cocaine from Martin Ballard?

15 A. Through November of 2011.

16 Q. Okay. And the first time -- when you got cocaine from
17 Mr. Ballard at your apartment, did you pay him for that
18 cocaine?

19 A. No, I didn't.

20 Q. At some point did you start paying him for the cocaine?

21 A. Yes, I did.

22 Q. Where would you go when you were getting cocaine from
23 Mr. Ballard, where would you go meet him to get cocaine?

24 A. He would come to my house, I would go to his house.

25 Q. When you say to his house, where was that?

HELEN CREEL - DIRECT EXAMINATION

1 A. It was off of Old Orangeburg Road over the 26 overpass to
2 the right, a subdivision on the right-hand side.

3 Q. Was it a dirt road?

4 A. No. Not -- off of Old Orangeburg Road, that way also near
5 Ancrum Lane, but also going out towards Jedburg.

6 Q. So two different ones. One over by toward Jedburg, you
7 went to that house?

8 A. Yes.

9 Q. And then you also went to a house over on Ancrum Lane,
10 that's the dirt road house?

11 A. Yes.

12 Q. How would you get in contact with Mr. Ballard in order to
13 get cocaine from him?

14 A. I would call him or text him.

15 Q. Okay. How often did Mr. Ballard's phone number change?

16 A. Approximately he had about four different phone numbers in
17 the time that I dealt with him.

18 Q. And how would you get those phone numbers from him, how
19 would you know he changed phone numbers?

20 A. Because he would call me from a different number.

21 Q. During the course of your dealings with Mr. Ballard, did
22 you see him with firearms?

23 A. Yes.

24 Q. And how much do you know about firearms?

25 A. I don't know a lot about firearms.

HELEN CREEL - DIRECT EXAMINATION

1 Q. Okay. But you'd see him with one from time to time?

2 A. Yes.

3 Q. And can you describe it in any way?

4 A. It was -- one was black and another was silver. I mean
5 that's --

6 Q. And were they semiautomatic modern looking guns?

7 A. No.

8 Q. You're not sure?

9 A. I don't --

10 Q. I can see you looking at me like you have no idea. Okay.
11 That's fine.

12 And in 2011, this time period, where were you working?

13 A. I was working at the solicitor's office in Dorchester
14 County.

15 Q. And at Mr. Ballard's request did you provide him
16 information from the solicitor's office?

17 A. I did.

18 Q. And what type of information did you provide Mr. Ballard
19 from the solicitor's office?

20 A. With an incident report of an ongoing case that was on the
21 docket.

22 Q. And that ongoing case was involving Mr. Ballard?

23 A. Yes.

24 Q. And did you also provide him information about the type of
25 undercover cars that narcotics officers were driving?

HELEN CREEL - CROSS-EXAMINATION

1 A. Yes, I did.

2 Q. And what kind of car did you tell him that they were using
3 at that point in time?

4 A. Dodge Charger.

5 MR. RICHARDSON: Miss Creel, if you'd answer any
6 questions Mr. Theos might have, I'd appreciate it.

7 A. Yes.

8 CROSS-EXAMINATION

9 BY MR. THEOS:

10 Q. Miss Creel, as you said, you were involved with Martin
11 from about May of 2011 through November 2011?

12 A. Yes.

13 Q. Is that right? And during that time period y'all were
14 involved in a romantic sexual relationship, were you not?

15 A. In a sexual relationship.

16 Q. You wouldn't characterize it as romantic, you would
17 characterize it instead as sexual?

18 A. That's correct.

19 Q. In fact, on at least one occasion you were involved with
20 Martin and another woman in a threesome and using cocaine
21 related to that engagement, that sexual engagement, were you
22 not?

23 A. That's correct.

24 Q. And as you said, during that time period you were using
25 cocaine on a regular basis, correct?

HELEN CREEL - CROSS-EXAMINATION

1 A. Yes.

2 Q. And so your dependence and your addiction to cocaine
3 was -- if we were to believe that it stopped in January and
4 restarted in May, that it was thriving from May 2011 through
5 November 2011, correct?

6 A. That is correct.

7 Q. You were using it on -- as much as you could get your
8 hands on it and as often as you could get your hands on it,
9 you were using it, right?

10 A. About every one to two weeks I was using it.

11 Q. And Martin, the person you were involved in the sexual
12 relationship with, Martin was the one that you relied upon to
13 give you that cocaine, correct?

14 A. That's correct.

15 Q. And he did that. He provided you with the cocaine that
16 you wanted and you needed, did he not?

17 A. That's correct.

18 Q. Now, at no time did you see Martin sell any drugs to
19 anybody, did you?

20 A. No.

21 Q. At no time did you overhear Martin talking with anybody
22 about selling drugs, did you?

23 A. No.

24 Q. At no time did you see any evidence, because you said you
25 went to Martin's house, at no time did you see any evidence

HELEN CREEL - CROSS-EXAMINATION

1 that would have caused you to believe that Martin was involved
2 in selling drugs, did you?

3 A. That's correct.

4 Q. The only thing you knew about Martin with respect to
5 cocaine was that he was getting you the cocaine you wanted and
6 you needed, correct?

7 A. That's correct.

8 Q. Now, you signed a proffer agreement on May the 22nd, 2012,
9 correct?

10 A. I did.

11 Q. And in that proffer agreement you agreed to provide
12 information to the Government related to Martin Ballard, did
13 you not?

14 A. That's correct.

15 Q. And you were told that if you provided information to the
16 Government and followed through with testifying regarding that
17 information, that you would not be prosecuted for your use and
18 your distribution, because receiving is the same as
19 distribution, you would not be prosecuted for your involvement
20 with cocaine.

21 MR. RICHARDSON: Objection, Your Honor, that's not
22 accurate.

23 MR. THEOS: Your Honor, this is cross-examination;
24 I'm entitled to this.

25 THE COURT: He's entitled, Mr. Richardson, to ask her

HELEN CREEL - CROSS-EXAMINATION

1 if she -- let's see what her answer is going to be. Now ask
2 the question.

3 BY MR. THEOS:

4 Q. It was your understanding, was it not, that if you
5 provided information related to Martin Ballard and then came
6 to court to testify against Martin Ballard, that you would not
7 be prosecuted for your involvement related to cocaine and the
8 information you provided.

9 A. That's correct.

10 Q. So that's what you've done.

11 A. Yes, sir.

12 Q. And you've done it in order to avoid prosecution, correct?

13 A. That's correct.

14 MR. THEOS: No other questions, Judge.

15 THE COURT: All right.

16 MR. RICHARDSON: Nothing further, Your Honor.

17 THE COURT: You may be excused.

18 MR. PHILLIPS: Jamal McElveen is our next witness,
19 Your Honor.

20 THE CLERK: State your name for the record.

21 A. Jamal McElveen.

22 JAMAL McELVEEN, a witness called by the Government, first
23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. PHILLIPS:

JAMAL McELVEEN - DIRECT EXAMINATION

1 Q. Just for the record again, could you state your name?

2 A. Jamal McElveen.

3 Q. And how old are you?

4 A. Forty.

5 Q. Where were you born?

6 A. Charleston, South Carolina.

7 Q. Have you lived in Charleston most of your life?

8 A. Yes.

9 Q. What kind of education do you have, where did you go to
10 school?

11 A. North Charleston High School. Got a G.E.D. Didn't
12 graduate.

13 Q. And what kind of work have you done since you graduated
14 from -- got your G.E.D.?

15 A. Held several different jobs. Mechanic work, telemarketer.

16 Q. Okay. Mr. McElveen, you also have some criminal
17 convictions as well.

18 A. Yes.

19 Q. And you were convicted in Federal Court of carjacking and
20 being a felon in possession?

21 A. Yes, possession of a weapon.

22 Q. When was that?

23 A. The crime happened in January of 1996, conviction in 1998.

24 Q. And you had a felon in possession, so you had a prior
25 felony conviction; what was that for?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. Possession of a narcotics, possession of a stolen car.

2 Q. Okay.

3 A. Discharging a firearm.

4 Q. Now, you were also convicted in 2013 of failure to stop
5 for blue light.

6 A. Yes.

7 Q. And that was in State Court?

8 A. Yes, State Court.

9 Q. And you have also been convicted of a federal crime in
10 2000 -- 2011? 2013, excuse me.

11 A. Yes, possession of cocaine with intent to distribute.

12 Q. Now I'm going to hand you -- well, we're going to show you
13 Government's Exhibit 10 K. This is your -- Do you recognize
14 that document on the screen?

15 A. Yes.

16 Q. Tell the Court what that document is.

17 A. That's my plea agreement.

18 Q. If we go to the second-to-last page, page nine, is that
19 your signature on page nine?

20 A. It's not on page nine.

21 Q. Here, we'll do it the old-fashioned way.

22 MR. PHILLIPS: If I may approach, Your Honor?

23 THE COURT: All right, sir.

24 Q. Is that your signature there?

25 A. Yes, it is.

JAMAL McELVEEN - DIRECT EXAMINATION

1 Q. All right. Now, this is an agreement you made with the
2 Government to resolve your drug charges in Federal Court most
3 recently, correct?

4 A. Yes.

5 Q. And what did you agree to do in this plea agreement?

6 A. Cooperate fully.

7 Q. All right. And cooperate fully regarding what?

8 A. Any of my drug activities, known or unknown to the Court.

9 Q. Okay. And did you agree to cooperate truthfully?

10 A. Yes.

11 Q. And what happens if you don't cooperate and provide
12 truthful information?

13 A. I was told I'd be held for perjury. And possibly receive
14 more time.

15 Q. And you've been sentenced in this case, in the case we're
16 talking about where the subject of this plea agreement?

17 A. Yes.

18 Q. And what was your sentence?

19 A. Sixty months.

20 Q. All right. And prior to your sentencing did you -- you
21 cooperated with the Government?

22 A. Yes.

23 Q. Was a motion filed on your behalf by the Government?

24 A. Yes.

25 Q. And at your sentencing?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. Yes, it was.

2 Q. And was your sentence reduced, based on that motion?

3 A. Yes, it was.

4 Q. All right. Now, you talked about some legitimate jobs
5 that you had, and could you tell us about any illegitimate
6 work that you've done?

7 A. Transported and sold cocaine, robberies.

8 Q. Robberies of who?

9 A. Other drug dealers.

10 Q. Okay. And let's focus on the transporting of cocaine.
11 When did you start doing that?

12 A. Around 2008.

13 Q. All right. And could you tell the Court how that came
14 about?

15 A. I established a connection in McAllen, Texas. And after
16 establishing that connection I began to purchase and transport
17 kilos of cocaine from McAllen, Texas, back to Charleston.

18 Q. How many kilos would you get at a time?

19 A. It would vary. It would vary between one maximum --
20 minimum and maximum ever was about six.

21 Q. And how were you bringing them back?

22 A. By road on transportation in a car.

23 Q. And how long did that connection last? In McAllen.

24 A. Until my incarceration in 2011.

25 Q. At any point did you switch sources of supply?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. I have a couple different sources.

2 Q. In McAllen?

3 A. In McAllen, yes.

4 Q. That initial source, did that continue all the way
5 through, or did you leave that source and turn to another at
6 some point?

7 A. It didn't continue all the way through, it was back and
8 forth.

9 Q. And why was that?

10 A. Sometimes that source was unavailable.

11 Q. And how did you -- so you secured another source in
12 McAllen?

13 A. Yes, I secured a secondary source of purchasing cocaine.

14 Q. And how did you come about that source?

15 A. Through a friend that I met here in South Carolina. A
16 friend named Maria, she introduced me to a family member of
17 hers who just happened to be in the same area.

18 Q. And then you began getting cocaine from that individual?

19 A. Yes.

20 Q. How much cocaine were you getting?

21 A. Like I said, it varied. I would always work on a cash
22 only basis, so I would purchase between one to four or five,
23 six kilos at a time from that person.

24 Q. Okay. Now, and this second source, when did you start
25 dealing with that individual?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. Around 2009, 2010.

2 Q. Now, when you were getting these kilos, how often were you
3 getting them? Like how often a month?

4 A. The times varied. Sometimes once a month, sometimes
5 twice; very very seldom three times a month.

6 Q. And what were you doing with the kilos when you got back
7 to Charleston?

8 A. I would sell them when I came back.

9 Q. Who did you sell them to?

10 A. Various people. Like different people around the city.

11 Q. Well, who was your -- who did you primarily sell to?

12 A. Xavier McElveen.

13 Q. And who is that?

14 A. It's a relative, deceased.

15 Q. Okay. And did you ever sell to Martin Ballard?

16 A. I never sold anything to Martin Ballard. The arrangement
17 that we had was he would actually give his money up front and
18 I would procure the purchase and bring it back and deliver it
19 to him. But me personally selling anything to him, it wasn't
20 ever mine, he would buy it up front.

21 Q. Okay. We'll get into that. Now, how did you meet Martin
22 Ballard?

23 A. I meant him through Xavier.

24 Q. And how did Xavier know him?

25 A. He told me that they met --

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. THEOS: I'm going to object.

2 THE COURT: I sustain that.

3 BY MR. PHILLIPS:

4 Q. Do you know where Mr. Ballard and Mr. McElveen met?

5 A. He said that --

6 Q. Don't tell us what he said at this point.

7 A. I don't know personally, I just know what he said.

8 Q. Okay, then we'll move on. But at some point you were
9 introduced to Mr. Ballard by Mr. McElveen.

10 A. Yes.

11 Q. When was that?

12 A. In 2010.

13 Q. All right. So when you met -- tell us about that meeting
14 in 2010 with Mr. Ballard; what purpose was that meeting?

15 A. That purpose was he told me that he had someone who was
16 interested in buying cocaine, and he told me he can get them a
17 decent price. The price I had was cheaper than what he was
18 purchasing at currently.

19 Q. This was Mr. McElveen brokering this meeting?

20 A. Yes.

21 Q. All right. And did he tell you at that time who you were
22 meeting with?

23 A. He just told me --

24 MR. THEOS: Your Honor, again, I object to what
25 somebody told him.

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. PHILLIPS: Your Honor, this was a
2 co-conspirator --

3 THE COURT: Wait just a minute.

4 MR. PHILLIPS: I apologize.

5 THE COURT: They engaged allegedly in this cocaine
6 conspiracy.

7 MR. THEOS: Your Honor, I think he can ask questions
8 about what Mr. Ballard may have said, but not about what
9 somebody that's deceased may have told him in that meeting.

10 MR. PHILLIPS: Your Honor --

11 MR. THEOS: That person is not part of this
12 conspiracy.

13 THE COURT: You asked him -- Repeat your question.

14 MR. PHILLIPS: Your Honor -- well, now I've forgotten
15 the question.

16 BY MR. PHILLIPS:

17 Q. What was the purpose of this meeting?

18 A. The purpose of the meeting was for two of us to meet.

19 THE COURT: You and who, Mr. Ballard?

20 A. Yes, sir, me and Mr. Ballard.

21 THE COURT: All right. Go ahead.

22 BY MR. PHILLIPS:

23 Q. And to meet for what purpose?

24 A. To see if we can come to an understanding concerning the
25 price of -- and the purchasing of cocaine.

JAMAL McELVEEN - DIRECT EXAMINATION

1 Q. Okay. And where did y'all meet?

2 A. At the fairgrounds off of Ladson Road. I mean off of
3 Highway 78.

4 Q. And what did you and Mr. Ballard discuss regarding
5 cocaine?

6 A. We discussed different prices, and we came to an
7 understanding that if I could deliver on the price that I told
8 him, that we could work together.

9 Q. All right. And did y'all make a plan for you to procure
10 cocaine from Mr. Ballard?

11 A. Yes.

12 Q. Tell the Court about that.

13 A. The initial purchase was kind of sort of a test run, it
14 was only for half a kilo of cocaine. And I received the money
15 from him and --

16 Q. You received the money from who?

17 A. I received the money from Xavier, the first time.

18 Q. And that was for the half kilo of cocaine?

19 A. Yes.

20 Q. And you had agreed upon that half kilo with Mr. Ballard at
21 the fairgrounds?

22 A. Yes.

23 Q. Okay. And what happened next?

24 A. The trip went on as planned, and I came back --

25 THE COURT: Talk louder.

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. The trip went on as planned. I came back and I delivered
2 the cocaine.

3 Q. Who did you deliver -- well, before I go to that, how much
4 money did you get from Mr. McElveen on Mr. Ballard's behalf?

5 A. Fourteen thousand dollars.

6 Q. Do you remember anything particular about the money?

7 A. Just that it was -- it was what I would call large money.

8 Q. Explain that to the Court, what do you mean by that?

9 A. Well, during my trips I would normally fly down, so going
10 through the TSA in the airport, can't have extremely large
11 amounts of money. So I would have to have the money shrunk
12 down into all hundreds, by going to different local banks and
13 exchanging twenties and fifties and tens for hundreds. And
14 that would make the money much smaller. Or when the money
15 came to me it was in small bills, so it was a large amount of
16 money.

17 Q. And that's how the money was that you received from
18 Mr. McElveen on Mr. Ballard's behalf?

19 A. Yes.

20 Q. Now, you said you delivered the half kilo of cocaine. Who
21 did you deliver that to?

22 A. I delivered it to Mr. Ballard.

23 Q. And where did y'all meet?

24 A. The initial meeting was at a Wal-Mart on Main Street.

25 Q. Main Street where?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. In Summerville.

2 Q. Okay. And tell us what happened at that meeting.

3 A. I gave him the cocaine and we spoke very briefly and we
4 went our separate ways.

5 Q. Do you recall what he was driving at that meeting?

6 A. Not nothing that stood out, no.

7 Q. Okay. Do you recall what he was driving in the first
8 meeting at the fairgrounds?

9 A. No, he never drove a very distinctive car that it was like
10 rental cars. Nothing that ever just stood out.

11 Q. Now, what happened after you delivered that half kilogram
12 of cocaine to Mr. Ballard in Summerville?

13 A. We spoke briefly later, and after we spoke, we came to an
14 understanding of purchasing other kilos of cocaine.

15 Q. Now, when you came to that understanding, did you meet
16 again or did y'all talk on the phone?

17 A. We met.

18 Q. Where did you meet?

19 A. We met several different times, but normally when we met
20 for the purchases, it was at an -- outside or near a local
21 bank, make a deposit.

22 Q. We'll get to that. Now I'm talking about after you
23 delivered the half kilo, your next meeting. Where y'all came
24 to the understanding that you were going to get more cocaine
25 for Mr. Ballard. Do you recall where that meeting occurred?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. Not exactly, no.

2 Q. Now, when y'all discussed getting more cocaine, what did
3 y'all talk about?

4 A. We just talked about the prices and --

5 Q. Did he tell you how much he wanted you to get?

6 A. He wanted more than I could supply.

7 Q. How much?

8 A. He wanted -- I told him the max I can get for him is
9 two kilos at a time.

10 Q. And how much did he ask for?

11 A. He didn't ask for a certain amount, he just wanted more
12 than that.

13 Q. And why couldn't you get him more than two?

14 A. Because if I got him more than two, then I wouldn't have
15 any for myself.

16 Q. And did that have to do with how you were transporting it
17 back at this time?

18 A. Yes, the way that it was being transported was -- wouldn't
19 allow me to get more than around five at a time.

20 Q. Tell the Court how you were transporting it and why you
21 could only be five kilos?

22 A. Because at that time I was coming through a check point in
23 the south Texas area called the Falfurrias check point, and
24 coming through that check point you had to body wrap the
25 cocaine to your body. And it's just hard to get more than

JAMAL McELVEEN - DIRECT EXAMINATION

1 five kilos body wrapped to a person at a time.

2 Q. Why did you want to have it body wrapped to you as opposed
3 to keeping it in the car?

4 A. Because it's much easier for the dogs that the narcotic
5 dogs to pick up on the scent.

6 THE COURT: Because why? I didn't understand you.

7 A. Because it's much easier for the narcotic dogs to pick up
8 on the scent of the drugs when it's in the car.

9 Q. Now, so y'all agreed upon that you were going to get him
10 two kilos per trip.

11 A. Yes.

12 Q. What were you going to get paid? What were you making off
13 of this, anything?

14 A. Not really making a profit. What I was doing is using the
15 extra money to take care of my transportation fees.

16 Q. So were you charging him -- what were you going to charge
17 him per kilo? Or what did you charge him per kilo?

18 A. Total, 26,000.

19 Q. And what did that include?

20 A. That included the purchase and transportation.

21 THE COURT: How much did you say?

22 A. Twenty-six thousand.

23 Q. All right, sir. At this meeting at Ryan's, y'all agreed
24 upon two kilos, and did you then make a trip?

25 A. Yes.

JAMAL McELVEEN - DIRECT EXAMINATION

1 Q. Before that trip did he provide you money?

2 A. Yes, he did.

3 Q. Did y'all ever talk about the large money?

4 A. Yes, we actually had a discussion and came to an
5 understanding that I told him how to make the money smaller,
6 and he agreed to it.

7 Q. Now, when you were going out to Texas were you flying
8 every time?

9 A. Not every time, no.

10 Q. Okay. So after that agreement when y'all discussed
11 two kilos, you made your next trip, how many trips did you
12 make along these lines where you brought him back two kilos
13 approximately?

14 A. In all honesty, I can't remember the exact amount of
15 trips, but I remember between four to five trips.

16 Q. Okay. And where would you meet with Mr. Ballard when you
17 returned to give him the cocaine?

18 A. We never met in North Charleston, but just different
19 locations in Summerville.

20 Q. Could you tell the Court some of those locations?

21 A. One was a small restaurant across from the Summerville
22 High School. Apartment complexes. Just different random
23 places.

24 Q. And you said you made four to five trips where you
25 obtained two kilos for Mr. Ballard?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. Yes, that I can remember.

2 Q. And when did that begin again?

3 A. Early 2010.

4 Q. And when did it end?

5 A. The last trip was December 2010.

6 Q. Other than the half kilogram you brought in the first
7 time, was it always two kilograms?

8 A. Yes.

9 Q. Okay. Now, tell us about that last trip, what happened on
10 that last trip in December.

11 A. In December I opted to take a road trip, wasn't able to
12 get to the bank, so I had a large amount of money. Drove down
13 to Texas, was pulled over in Beaumont, Texas. When I was
14 pulled over, I had a little over \$100,000 and it was
15 confiscated.

16 Q. And whose money was confiscated? Whose money made up that
17 \$100,000?

18 A. It was comprised of four different people. My money,
19 Mr. Ballard's money, Mr. McElveen's. I'm sorry, two
20 McElveens, Xavier, Jamal and Mr. Ballard.

21 Q. Was it more than \$100,000?

22 A. Yes, sir.

23 Q. How much of that money was Ballard's; do you remember?

24 A. A little over 40,000.

25 Q. How much cocaine were you set to get him on that trip?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. I was supposed to get five kilos.

2 Q. Okay. Now, when they seized that money, what happened
3 next with your dealings with Mr. Ballard?

4 A. He pretty much went sour.

5 Q. Did you talk to him about the seizure?

6 A. Explained to him about it. He wanted some kind of
7 compensation, it was none to be had, so we was at an impasse.

8 Q. And did y'all have any other drug dealings after that?

9 A. No.

10 THE COURT: I didn't understand how the seizure,
11 exactly how the seizure took place. Tell me that again.

12 A. I was driving west on Interstate 10, and a state trooper,
13 a Texas state trooper pulled us over.

14 THE COURT: You said pulled us. There was somebody
15 with you?

16 A. Yes, sir, me and Xavier McElveen.

17 THE COURT: Go ahead.

18 A. He pulled us over and did a search of the car and found a
19 large amount of money. We were arrested for money laundering.

20 THE COURT: Well, they let you go?

21 A. We were arrested. We were arrested, had to post bond.

22 THE COURT: And that was when you were going with
23 \$100,000.

24 A. Yes, sir.

25 THE COURT: All right, sir. Go ahead.

JAMAL McELVEEN - DIRECT EXAMINATION

1 BY MR. PHILLIPS:

2 Q. Before we leave that, when Mr. Ballard delivered you the
3 money, where would y'all meet for him to deliver the money, or
4 what would y'all do?

5 A. It was never a long meeting, we would meet, and like I
6 said, random places in the Summerville area, we'd exchange
7 money. No real small talk.

8 Q. What did you do with the money when he gave it to you;
9 would it depend on how you were going to travel?

10 A. Yes, depends on how I would travel, but normally I would
11 take it, put it in a secure place. I would go to my bank,
12 make a deposit, so that I would have money on the debit card.
13 But after that I would take the money into a secure place.

14 Q. Okay. Now, after those last dealings in December of 2010,
15 did you ever come across Mr. Ballard again?

16 A. On the streets, no.

17 Q. Okay. Well, did you ever -- on the streets or -- did you
18 come across him somewhere else?

19 A. Yes, in the county jail.

20 Q. Tell us about that meeting. How did y'all come across one
21 another?

22 A. We actually bumped into each other in the same cell block.
23 We had -- I'm sorry?

24 Q. What charges were you serving at that time?

25 A. That's when I was serving my federal charges.

JAMAL McELVEEN - DIRECT EXAMINATION

1 Q. Okay. So you bunked across from one another in the cell
2 block; tell us what happened.

3 A. We just had -- just had random conversation, nothing -- we
4 didn't have any illegal conversation, we just talked about
5 different things.

6 Q. Had you been transferred from another cell block?

7 A. Yes.

8 Q. Did he talk to you about anyone that was in that cell
9 block where you just left?

10 A. Yes, he asked me what cell block I came from, I told him,
11 and he said he wish he knew I was in there, he would have
12 asked me to do something to somebody that was in that cell.

13 Q. And who's that?

14 A. Somebody he called Slim.

15 Q. Do you know Slim's real name?

16 A. No.

17 Q. Okay. Did he tell you why he wanted you to do something
18 to that individual?

19 A. He said he was telling on him.

20 Q. Telling on him what?

21 A. He said that he was informing on him.

22 Q. In his case?

23 A. In his case, yeah.

24 Q. Now, what happened -- how long were y'all in the same cell
25 block?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. Less than 24 hours.

2 Q. And what happened?

3 A. He was moved the next day.

4 Q. Where was he -- Do you know where he was moved to?

5 A. No. Found out later that he was moved to Georgetown.

6 Q. Okay. Is that the last contact you had with Mr. Ballard?

7 A. Yes.

8 Q. Okay. Now, while you've been incarcerated, did you come
9 across an individual named Jimmie Harris?

10 A. Yes.

11 Q. Tell the Court about -- How do you know Jimmie Harris?

12 A. I really don't know Jimmie Harris personally; I met him in
13 jail.

14 Q. Okay. Do you know what his nickname is?

15 A. Jim Black.

16 Q. What was it? Say it again?

17 A. Jim, J-I-M, Black.

18 Q. When did you meet Mr. Harris?

19 A. In 2013.

20 Q. And did you have any conversations with Mr. Harris --

21 THE COURT: What year, 2000 what?

22 A. Thirteen.

23 BY MR. PHILLIPS:

24 Q. When you met with Mr. Harris -- well, just tell us, did
25 y'all hang out in jail, what was y'all's relationship in jail?

JAMAL McELVEEN - DIRECT EXAMINATION

1 A. We had several conversations about various different
2 things.

3 Q. Did he ever talk to you about a shooting that he was
4 involved in?

5 MR. THEOS: Your Honor, I'm going to object to
6 anything Mr. Harris may have said to --

7 THE COURT: What are you objecting to, sir?

8 MR. THEOS: Well, the Government is trying to elicit
9 testimony from Mr. McElveen regarding what somebody else told
10 him.

11 THE COURT: Yes, sir.

12 MR. THEOS: And that's hearsay.

13 THE COURT: Under normal circumstances.

14 MR. THEOS: I believe under these circumstances as
15 well, Judge.

16 THE COURT: What connection have they shown with Mr.
17 -- with this witness and the witness he was talking to?

18 MR. THEOS: Your Honor, Mr. Harris is a co-defendant
19 in this case, and I assumed that Mr. Phillips is attempting to
20 elicit testimony from Mr. McElveen regarding what Mr. Harris
21 told him or may have told him, or what Mr. McElveen claims he
22 told him, and that's hearsay.

23 MR. PHILLIPS: Your Honor, it's admissible under
24 Rule 804(b)(3), it's a statement against Mr. Harris' penal
25 interests to a non-law enforcement witness.

JAMAL McELVEEN - DIRECT EXAMINATION

1 THE COURT: Wait just a minute.

2 MR. PHILLIPS: And, Your Honor, we briefed this issue
3 in our pretrial brief on page 35.

4 THE COURT: What?

5 MR. PHILLIPS: We briefed this issue in our pretrial
6 brief on page 35.

7 THE COURT: All right, sir.

8 (Brief interruption in proceedings.)

9 THE COURT: To start with, weren't all these people
10 involved in this drug conspiracy?

11 MR. PHILLIPS: Yes, Your Honor. We're shifting now
12 to Mr. McElveen had information about his involvement with
13 Mr. Ballard, but his -- he also has information regarding the
14 shooting. And we're shifting now to the shooting conspiracy.
15 To the extent that that's part of the drug conspiracy, yes,
16 he'd be involved in the drug conspiracy.

17 THE COURT: That's not the information you're
18 soliciting from him.

19 MR. PHILLIPS: Well, he -- yes, it is, because the
20 shooting is part of the drug conspiracy as well. It's, you
21 know, so that the conspiracy can continue on. But also
22 there's a separate conspiracy, or you can consider the
23 conspiracy of the shooting itself, that these statements were
24 made in that conspiracy, but also against Mr. Harris' penal
25 interests.

JAMAL McELVEEN - DIRECT EXAMINATION

1 THE COURT: Well, he wasn't involved -- is he charged
2 in the shooting conspiracy?

3 MR. PHILLIPS: Mr. McElveen?

4 THE COURT: Yes, sir.

5 MR. PHILLIPS: No, sir, Mr. Harris was.

6 THE COURT: Mr. Harris is charged in it.

7 MR. PHILLIPS: Yes, sir.

8 MR. THEOS: Your Honor, he's also not charged in the
9 drug conspiracy. This witness.

10 THE COURT: All right, sir, now what was --

11 MR. PHILLIPS: Your Honor, I asked -- he said he came
12 across -- he met Mr. Harris, and I had asked if -- he was
13 about to testify --

14 THE COURT: Don't you answer any of this. All right,
15 go ahead.

16 MR. PHILLIPS: Your Honor, I asked -- well, I guess
17 let me -- I can -- this is the question I would like to ask.
18 Did Mr. Harris tell you about his involvement in any criminal
19 activity. That's probably the best way to start. And then I
20 anticipate that he will talk about the conversations that Mr.
21 Harris had, implicating Mr. Harris in the shooting, which is
22 obviously against his penal interests.

23 THE COURT: And what is your position? It wouldn't
24 be against Mr. Harris' interests, penal interests?

25 MR. THEOS: Your Honor, my objection is based on a

JAMAL McELVEEN - DIRECT EXAMINATION

1 couple of different things. First and foremost, in order to
2 qualify as an exception under Rule 804(a)(4)(B), the
3 declarant, the alleged declarant of that statement, must be
4 unavailable. Mr. Harris is available. And he has been
5 subpoenaed by us to testify, but he's certainly available.
6 And because he is available, and, therefore, not unavailable,
7 this witness can't testify. It doesn't fall within one of the
8 exceptions to the hearsay that is recited and explained in
9 Rule 804. And it would deny us the opportunity of obviously
10 confronting the witness regarding what he claimed to have said
11 to this witness.

12 Now, nothing would prevent the Government from calling
13 Mr. Harris as a witness. And Mr. Harris, again, is available,
14 he's pled guilty in the shooting portion of this.

15 THE COURT: This 804, doesn't it apply when the
16 declarant is unavailable as a witness?

17 MR. PHILLIPS: It does, Your Honor, but Mr. Harris,
18 while he has pled guilty, he's still -- he's unavailable,
19 because he would likely plead the Fifth and --

20 THE COURT: I mean, until he does that -- seemed like
21 to me you may be getting the cart before the horse. Until he
22 does indicate his unavailability, or you can't find him or
23 he's dead or something, you can't assume he's unavailable when
24 he's physically -- you know where he is physically. And it
25 just seems to me that this whole Rule 804 only applies when a

JAMAL McELVEEN - DIRECT EXAMINATION

1 declarant is unavailable.

2 Now, there's no evidence before the Court that you've
3 presented that he's unavailable.

4 MR. PHILLIPS: All right, Your Honor, we'll --

5 THE COURT: I mean, if he comes up here and takes the
6 Fifth or won't testify or -- that's a different matter.

7 MR. PHILLIPS: Okay. Well, Your Honor, our plan, we
8 will call Mr. Harris, and then we'd ask for leave to recall
9 Mr. McElveen based on that.

10 THE COURT: All right, you can do that.

11 MR. PHILLIPS: All right, Your Honor, at this time we
12 have no further questions for Mr. McElveen.

13 THE COURT: All right, sir.

14 MR. THEOS: Your Honor, Mr. Phillips approached me at
15 the last break and provided me with some information that
16 we -- discovery information we had not previously been
17 provided. Obviously just finding out 30 minutes ago, we need
18 an opportunity to understand exactly what that information is,
19 and determine how to use it with respect to cross-examination
20 of Mr. McElveen.

21 THE COURT: Does it involve this witness?

22 MR. THEOS: Yes, sir.

23 THE COURT: How long do you need?

24 MR. THEOS: Your Honor, I'm not quite sure what it is
25 because I haven't seen it.

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. PHILLIPS: It's just information that came about
2 in my meeting with him regarding one statement and a couple
3 paragraphs in the statement. So I don't think it will take
4 that long.

5 THE COURT: We'll stay here, but we'll be at ease and
6 you go outside or go somewhere or go in my library, if you
7 want, and sit down and talk and see how long it's going to be.

8 (Brief interruption in proceedings.)

9 MR. PHILLIPS: Your Honor, what we'd like to do, if
10 it pleases the Court, I'm going to ask a few questions on
11 direct regarding his arrest in the federal case that pertain
12 to the issue we're talking about.

13 THE COURT: You're saying his federal case, now which
14 case are you talking about?

15 MR. PHILLIPS: The federal case he pled guilty to,
16 the charges that led to his federal case, I'm going to ask a
17 few questions about that which pertain to the report that
18 we're discussing. And then we'd ask, given the time, maybe
19 ask to break for an early lunch to give them time to digest
20 that with the information that I learned in that meeting with
21 him, which we've just gone over. So that's sort of what we
22 agreed upon, and they feel like that would give them enough
23 time to adequately prepare, based on that information.

24 THE COURT: You talking about over the lunch break?

25 MR. PHILLIPS: Yes, sir.

JAMAL McELVEEN - DIRECT EXAMINATION

1 THE COURT: Is that correct?

2 MR. THEOS: That's correct, Judge.

3 THE COURT: Go ahead and ask your questions.

4 BY MR. PHILLIPS:

5 Q. In July of 2011 were you stopped by the South Carolina
6 Highway Patrol?

7 A. Yes.

8 Q. And what happened when they stopped you? What were you
9 carrying in the car?

10 A. A kilo of cocaine.

11 Q. And who was with you?

12 A. Cedric Myers.

13 Q. Was there anyone else with you in the car?

14 A. A female; I don't know her name.

15 Q. Now, the Highway Patrol found the kilo of cocaine; were
16 you questioned at that time?

17 A. Yes.

18 Q. Where were you questioned?

19 A. Initially on the side of the road, and later at a truck
20 weigh station.

21 Q. All right. And did you provide any information or did you
22 begin to cooperate at that time?

23 A. Yes.

24 THE COURT: He said yes; yes to what?

25 A. Yes to his question.

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. PHILLIPS: To providing information and
2 cooperating at that time.

3 THE COURT: All right.

4 BY MR. PHILLIPS:

5 Q. And who did you speak to?

6 A. DEA agent; I don't know his name.

7 Q. Now, what did you tell him about?

8 A. At that time I told him that I was bringing cocaine back
9 for someone.

10 Q. All right. And did you tell them where you got the
11 cocaine from?

12 A. Yes. I told them I got it from Texas.

13 Q. Did you tell them who you got it from?

14 A. Yes.

15 Q. And regarding who you got it from, did you accurately and
16 truthfully tell them who that was?

17 A. The person who I procured it from, yes.

18 Q. Now, regarding the people who you told the agent you were
19 getting it from, did you tell the truth?

20 A. No.

21 Q. Did you tell them -- did you not -- did you give him names
22 or provide him names?

23 A. Yes, I did. But it was an attempt to not have the person
24 that was with me charged.

25 Q. And who was that?

JAMAL McELVEEN - DIRECT EXAMINATION

1 THE COURT: Excuse me, an attempt what?

2 A. I was basically trying -- I was basically trying for the
3 person that was with me to not be charged, so that they can be
4 released on the scene.

5 Q. And who was that?

6 A. Cedric Myers.

7 Q. Was that cocaine for Cedric Myers?

8 A. No, it was -- No. The cocaine was mine.

9 Q. The cocaine was yours?

10 A. Yes.

11 Q. But you said it belonged to someone else?

12 A. Yes.

13 Q. Now, were you charged with -- were you charged in State
14 Court for that cocaine?

15 A. Initially started in State Court, yes.

16 Q. And then were you later charged in Federal Court?

17 A. Yes, I was indicted federally.

18 Q. Tell the Court about that. Did you bond out?

19 A. Yes, I received a \$200,000 bond, I bonded out. And after
20 I bonded out, approximately three weeks later I believe I was
21 indicted in the federal -- before the -- for conspiracy and
22 for the drugs.

23 Q. And how did you find out about that indictment?

24 A. I went to -- I went to try to retrieve the possessions
25 that I had in the truck, and during that time a DEA agent told

JAMAL McELVEEN - DIRECT EXAMINATION

1 me that I was in a process of being indicted. So when he told
2 me that, I fled.

3 Q. You fled?

4 A. Yes.

5 Q. You tried to avoid being arrested on the federal charges?

6 A. Yes.

7 Q. Can you tell the Court about that?

8 A. Sure. I went to my condo, I put some of my own personal
9 blood, different furniture, different areas of the condo, I
10 packed up some things, took a large amount of money and I
11 fled.

12 Q. How were you eventually arrested?

13 A. Came back to Charleston to visit a family member, and was
14 pulled over in a traffic stop and I attempted to flee, and
15 after a short chase I was arrested. And my fingerprints were
16 ran and found out that I was a fugitive.

17 Q. And you've been incarcerated ever since?

18 A. Yes.

19 THE COURT: When was that?

20 A. February 15th, 2013.

21 Q. That's when you were arrested?

22 A. Yes.

23 Q. When did you originally flee?

24 A. August the 10th, 2011.

25 Q. Okay. So you -- Okay.

JAMAL McELVEEN - DIRECT EXAMINATION

1 THE COURT: About a year and a half?

2 A. Yes, sir.

3 MR. PHILLIPS: Your Honor, at this time we'd ask to
4 break, and I'll make sure they understand regarding that
5 report, and we could come back earlier, if you'd like, or --
6 whatever the Court --

7 THE COURT: Well, now, I don't want anybody talking
8 to this witness.

9 MR. PHILLIPS: Your Honor, I think -- Yes, sir. We
10 won't be meeting with him.

11 THE COURT: I mean, what do you plan? What is it
12 that the defendant -- who is it the defendant's got to talk
13 to?

14 MR. PHILLIPS: They don't have to talk, we just
15 didn't want to go in -- we didn't want to sit in there and --
16 they just want to make sure they have a clear understanding of
17 what he stated in the meeting regarding that traffic stop.
18 And so --

19 THE COURT: It doesn't require them trying to
20 interview him?

21 MR. PHILLIPS: No, sir. No, sir. They just asked
22 for that time just to make sure, because he's got, you know,
23 Mr. McElveen has a long history that there's a lot of
24 information regarding Mr. McElveen, so I believe they just
25 need time --

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. THEOS: Your Honor, we don't need to, of course,
2 speak with Mr. McElveen outside of the courtroom. But we were
3 just provided some information that we would like to make sure
4 we understand, for purposes of cross-examination. And
5 apparently, and I didn't see it, but apparently last night we
6 were provided with another e-mail with additional information
7 that I haven't -- I didn't see. And I'd like to review that
8 before I cross-examine Mr. McElveen.

9 THE COURT: All right, Mr. Marshal, you keep this
10 witness separate from anybody else.

11 THE MARSHAL: Yes, sir, I will. Do you want to give
12 him the rules on not talking to anybody?

13 THE COURT: Yes, sir, I'm going to do that. Don't
14 you talk to anybody about this case or anything during this
15 break period.

16 A. Yes, sir.

17 THE COURT: The marshal, I guess, will give you
18 lunch, but you don't talk to anybody about anything. All
19 right, sir, now let's take him. You go on. You can be
20 excused.

21 Now, you were talking about Rule 804. Is this going to
22 eliminate --

23 MR. PHILLIPS: No, sir. We're still going to --
24 because this is just regarding, you know, their impeachment of
25 him regarding -- all he has testified about is his alleged

JAMAL McELVEEN - DIRECT EXAMINATION

1 involvement in the drug conspiracy. We're going to still need
2 to bring Mr. Harris and --

3 THE COURT: Then we better have Mr. Harris here when
4 we come back from --

5 MR. PHILLIPS: I think we're going to --

6 MR. RICHARDSON: Mr. Harris is not immediately
7 available. He's not in the Charleston area. I just spoke
8 with his counsel, and his counsel indicated that he advised
9 his client to take the Fifth Amendment and not testify. But
10 his counsel advised that he does not know whether Mr. Harris
11 will follow that advice or not. So what we proposed doing is
12 bringing Mr. Harris on Monday, and give his counsel a chance
13 to speak with him in advance and put him on the witness stand
14 and ask that question. Whether he's going --

15 THE COURT: How are you going to get rid of this
16 witness? Do we know what Mr. Harris is going to do?

17 MR. RICHARDSON: What we would ask for you to do is
18 conditionally take that testimony from this witness. We
19 couldn't do it in front of a jury, but we think with a judge,
20 we could conditionally take that testimony, let him describe
21 what he would testify, if permitted. And if it turns out that
22 Mr. Harris is available, in that case then we would have a
23 different discussion about whether you should consider the
24 information or not.

25 THE COURT: Well, you wouldn't do that with a jury,

JAMAL McELVEEN - DIRECT EXAMINATION

1 that's true, because you can't unring a bell very easy. But I
2 don't know whether the defendant wants to agree to that. It
3 wouldn't hurt my feelings one way or another.

4 MR. THEOS: Judge, we would not agree to that. I
5 think it's -- before the Court decides whether or not
6 Mr. McElveen should be allowed to testify pursuant to 804, I
7 believe that we first need to find out if Mr. Harris is indeed
8 going to take the Fifth and/or otherwise unavailable.

9 MR. RICHARDSON: That will be okay, Your Honor, so
10 we'd ask after we finish with Mr. McElveen today, he be held
11 under subpoena and we'll --

12 THE COURT: How are you going to finish with
13 Mr. McElveen until you know whether Mr. Harris is going to
14 testify?

15 MR. RICHARDSON: We would just have to re-call him
16 next week for a brief piece of testimony. If Mr. Harris is
17 unavailable as we anticipate he will be, then we will just
18 recall Mr. McElveen for a short piece of testimony just on
19 this limited information.

20 THE COURT: So you don't intend to try to get in --
21 you mentioned a moment ago, go ahead and put it on the record,
22 you're not going to do that.

23 MR. RICHARDSON: It doesn't sound like Your Honor or
24 defense is inclined to that suggestion, I thought it might
25 expedite things.

JAMAL McELVEEN - DIRECT EXAMINATION

1 THE COURT: Well, we want to expedite, but we don't
2 want to expedite it at the risk of violating the rules and
3 violating people's rights.

4 MR. RICHARDSON: I understand that.

5 THE COURT: And so how much longer do you plan to be
6 with this witness if you eliminate any question involving
7 Mr. Harris, how much longer have you got?

8 MR. RICHARDSON: Your Honor, the Government would be
9 done with him at that point. Obviously would then turn to
10 Mr. Theos.

11 THE COURT: I know that, but I mean -- if you're
12 through with him except for how Mr. Harris is involved.

13 MR. PHILLIPS: Yes, sir.

14 THE COURT: Well, he can't very well question him
15 until he knows what is going to happen to Mr. Harris, can you?
16 Or can you? Are you willing to --

17 MR. THEOS: Well, Your Honor, I guess -- I guess I
18 could question him regarding what he's already testified to, I
19 could cross-examine him related to this testimony and withhold
20 further examination or cross-examination pending what we find
21 out about Mr. Harris' testimony. Or, in the alternative, I
22 could wait.

23 The only problem I envision is if Mr. Harris does, in
24 fact, testify, then we'd have to bring Mr. McElveen back for
25 the sole purpose of me cross-examining him based on what he's

JAMAL McELVEEN - DIRECT EXAMINATION

1 already testified to. But whatever the Court wants, I'll do.

2 THE COURT: Well, my thought is that we might as well
3 just put off anything more with Mr. Harris -- I mean
4 Mr. McElveen -- and find out what Mr. Harris is going to do.
5 And then when we make whatever ruling we're going to make,
6 then you're free to cross-examine him on everything that he's
7 said.

8 MR. THEOS: That's fine with me, Your Honor. I would
9 just ask, the Government indicated that they might not be able
10 to get him here till Monday. I'm not -- I don't know where
11 he's situated. It would be great if they could get him here
12 before that.

13 MR. RICHARDSON: We can not get him here today, Your
14 Honor, just logistically.

15 THE COURT: Well, we had planned to hold court
16 yesterday, today, skip tomorrow and be back Friday. This
17 week.

18 MR. THEOS: Okay.

19 THE COURT: Isn't that what I had said?

20 MR. RICHARDSON: Yes, Your Honor.

21 THE COURT: And that would put Monday --

22 MR. THEOS: That's fine with me, Your Honor.

23 MR. RICHARDSON: So just scheduling-wise, Your Honor,
24 I spoke to his counsel, I'm sorry, but we're trying to do a
25 few things at the same time. Spoke -- speaking with his

JAMAL McELVEEN - DIRECT EXAMINATION

1 counsel, I -- I think getting Mr. Harris here on Monday is the
2 most likely scenario to address. I would propose --

3 MR. THEOS: That's fine with me, Your Honor.

4 MR. RICHARDSON: I'd propose, obviously whichever
5 y'all prefer, but I think it probably makes more sense for you
6 to address Mr. McElveen, go ahead and cross-examine him. It
7 may be that at the end of the day we just skip all of this.
8 So I would think it would make some sense, let's address where
9 we are today; if we choose to re-call him, then we can address
10 that issue at that point.

11 MR. THEOS: I appreciate Mr. Richardson's advice, but
12 I think it probably makes more sense from an effective
13 assistance of counsel standpoint to wait until Mr. Harris --
14 till Mr. McElveen -- till we know that he's completed his
15 testimony on direct, before I conduct cross.

16 THE COURT: Well, I think that's more appropriate to
17 get all of his direct testimony that the Court's going to let
18 in, let's get it in the record, then you can cross-examine him
19 on what's in the record.

20 MR. THEOS: Yes, sir.

21 THE COURT: Now let me see, is that going to be
22 satisfactory with the Government now? If you've got some
23 reason it's not, you tell me.

24 MR. RICHARDSON: It is, Your Honor.

25 THE COURT: It just doesn't sound like it is.

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. RICHARDSON: Your Honor, I'm not much of a poker
2 player. I think that would be just fine, Your Honor. I think
3 that will be just fine.

4 THE COURT: Well, looked like your companion there is
5 disagreeing with that now.

6 MR. RICHARDSON: He's not disagreeing, Your Honor, he
7 was just asking where we were going for lunch. That will suit
8 the Government just fine.

9 THE COURT: Then you've got -- and we're coming back
10 at 2:30. You've got a witness ready at 2:30?

11 MR. RICHARDSON: We'll have Chase Mosley will be the
12 first witness after lunch.

13 THE COURT: Something wrong with that?

14 MR. THEOS: No, I don't have any objection, of
15 course. I don't think I have the right to object.

16 THE COURT: I thought you were walking to start
17 something. All right. Now, is everything all set now?

18 MR. RICHARDSON: I think so.

19 MR. THEOS: Judge, the only thing maybe we should
20 bring to your attention now is this same issue, same 804 issue
21 with respect to Mr. McElveen, we believe will also arise with
22 respect to Mr. Mosley.

23 THE COURT: Mr. who?

24 MR. THEOS: To the Government's next witness.

25 MR. PHILLIPS: Not Mr. Mosley. That's why we're

JAMAL McELVEEN - DIRECT EXAMINATION

1 doing Mosley.

2 (Discussion held off the record.)

3 MR. RICHARDSON: I think we'll be back at 2:30 and
4 ready to see you then.

5 THE COURT: All right. We'll be in recess till 2:30.

6 (A recess was held at this time.)

7 THE COURT: One thing that occurred to us from
8 earlier, not to me, but is this statement that you're talking
9 about going to be against Harris' penal interests, or would it
10 be against the defendant's penal interests?

11 MR. PHILLIPS: It's the declarant, which is Harris.
12 And Harris' statement is against penal interests, and he's the
13 declarant.

14 THE COURT: I mean, I know that's what it's got to
15 be.

16 MR. PHILLIPS: It does -- it has -- it is -- he talks
17 about Mr. Ballard, but we don't believe -- well, there is no
18 confrontation because it's nontestimonial. So confrontation
19 clause issue, because it's not a testimonial statement.
20 Between Harris and another inmate.

21 THE COURT: Well, anyway, the marshal said he's going
22 to be here Friday. I believe that's right.

23 THE MARSHAL: Your Honor, he'll be in Charleston,
24 yes, sir. But I think they don't want him till Monday.

25 MR. PHILLIPS: Can we approach?

JAMAL McELVEEN - DIRECT EXAMINATION

1 MR. RICHARDSON: Your Honor, with scheduling issues,
2 I think now that we've sort of gotten Mr. McElveen off the
3 stand, we'll be ready to take that issue up on Monday. We've
4 got other people that are going to be here on Friday.

5 THE COURT: That suits me fine. I just thought if
6 y'all wanted him early, then we could get him early.

7 MR. RICHARDSON: We'll take that issue up on Monday,
8 Your Honor.

9 THE COURT: Okay. Then let's get going.

10 MR. PHILLIPS: Yes, sir, the Government calls Steven
11 Chase Mosley.

12 THE COURT: I'm sorry I'm late. I used to sit around
13 the courtroom as a lawyer thinking, wonder what that judge is
14 doing back there while we're out there waiting for him, all he
15 does is keep us waiting; I'm never going to do that. I try
16 not to do it, but I failed today and I apologize.

17 THE CLERK: State your name for the record.

18 A. Steven Chase Mosley.

19 STEVEN MOSLEY, a witness called by the Government, first
20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PHILLIPS:

23 Q. State your name for the record.

24 A. Steven Chase Mosley.

25 Q. And you can probably just -- just sit normal -- If we need

STEVEN MOSLEY - DIRECT EXAMINATION

1 you to move forward, we'll let you know.

2 A. Okay.

3 Q. Where were you born?

4 A. Summerville, South Carolina.

5 Q. How old are you?

6 A. Thirty.

7 Q. And what kind of education do you have?

8 A. High school.

9 Q. Where did you go to high school?

10 A. Summerville High School.

11 Q. And you graduated from there?

12 A. No.

13 Q. Did you get a G.E.D.?

14 A. No.

15 Q. So you didn't finish high school?

16 A. No.

17 Q. Okay. Now, what kind of work have you been involved in
18 since you ended high school?

19 A. Framing houses.

20 Q. All right. Is that all that you've done?

21 A. Framing houses and doing like security work for clubs a
22 long time ago.

23 Q. Okay. What have you done most recently?

24 A. Driving truck.

25 Q. Okay. And have you ever worked with the Town of

STEVEN MOSLEY - DIRECT EXAMINATION

1 Summerville?

2 A. Yes, sir.

3 Q. When did you work with Town of Summerville?

4 A. From 2007 -- from 2007 to 2012.

5 Q. Okay. Why did you leave there?

6 A. Drug charges.

7 Q. The drug charges in this case?

8 A. Yes, sir.

9 Q. Okay. Let's get to that. Have you pled guilty in this
10 case?

11 A. Yes.

12 Q. I'm going to hand you -- look on that screen, this is
13 Government's Exhibit 10 DD. Do you recognize that document?

14 A. Yes, sir.

15 Q. What is it?

16 A. My plea agreement.

17 Q. All right. And if we could go to the second-to-last page.
18 We'll just do it the old-fashioned way and hand it up.

19 MR. PHILLIPS: May I approach, Your Honor?

20 THE COURT: Yes.

21 Q. Is that your signature on that document?

22 A. Yes.

23 Q. All right. What did you promise to do in this plea
24 agreement with the Government?

25 A. Tell the truth.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. All right. Tell the truth about what?

2 A. About my activities.

3 Q. Illegal activities?

4 A. Yes.

5 Q. Okay. And what agreements has the Government made with
6 you in this agreement, as you understand them?

7 A. It would benefit me to be truthful.

8 Q. Well, what is your understanding of what has the
9 Government promised to do in this agreement if you testify
10 truthfully or cooperate truthfully?

11 A. Benefit me.

12 Q. Okay. Now, what happens if you don't tell the truth in
13 this agreement?

14 A. More charges.

15 Q. And you also entered into a proffer agreement in this
16 case, and that's 10 D? Government's Exhibit 10 D? Did you
17 enter into a proffer agreement in this case?

18 A. Yes.

19 Q. And what did you promise to do in that agreement?

20 A. Excuse me?

21 Q. What did you promise to do in that agreement?

22 A. Speak truthfully.

23 Q. And that was prior to your guilty plea?

24 A. Yes.

25 Q. Okay. Now, you talked about your legitimate employment

STEVEN MOSLEY - DIRECT EXAMINATION

1 and you pled guilty in this case. Tell the Court about your
2 involvement with drugs.

3 A. I started selling drugs back in 2009.

4 Q. When? When in 2009?

5 A. Summer, July, August.

6 Q. Okay. And how did that come about?

7 A. Times were a little rough; I wanted to make some extra
8 money.

9 Q. And who did you go to?

10 A. Martin Ballard.

11 Q. Why did you go to Martin Ballard, if you wanted to sell
12 drugs?

13 A. I knew he had the drugs.

14 Q. How did you know that?

15 A. Word on the street.

16 Q. Okay. Had you ever had any conversations with him about
17 selling drugs prior to 2009 when you started, yourself?

18 A. Not really, no.

19 Q. Okay. So tell us about when you approached Mr. Ballard to
20 begin to sell drugs.

21 A. When I approached him in 2009?

22 Q. Yes. When you started.

23 A. Repeat the question.

24 Q. Tell the Court about when you -- how it came about, how
25 you met him, how you started selling drugs with Mr. Ballard.

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. I met him, you know, since we were younger, and back in
2 2009 things got rough, and I went to him.

3 Q. Where did you go to him?

4 A. On the dirt road.

5 Q. What dirt road? Do you know the name of it?

6 A. Ancrum Lane.

7 Q. How long had you known Mr. Ballard before this time in
8 2009?

9 A. Since I was about eight or nine.

10 Q. Did y'all go to school together?

11 A. Yes, yes.

12 Q. So you went to Ancrum Road, you met with him?

13 A. Yes.

14 Q. And what did you tell him?

15 A. I needed him to hook me up.

16 Q. Hook you up with what?

17 A. Some cocaine.

18 Q. And how much cocaine did you buy from Mr. Ballard?

19 A. A half an ounce.

20 Q. All right. And then what would you in turn do with that
21 half an ounce?

22 A. Cut it and sell it.

23 Q. When you say cut it, what do you mean?

24 A. Put baking soda with it, sell it.

25 Q. And what effect did adding the baking soda, what did that

STEVEN MOSLEY - DIRECT EXAMINATION

1 do?

2 A. It makes more, the quantity more.

3 Q. So you could sell more?

4 A. Yes.

5 Q. Now, how much did you -- do you recall how much you paid
6 Mr. Ballard for a half ounce of cocaine?

7 A. I believe it was between four and 450.

8 Q. And is that a price during the time of your dealings?

9 A. Yes.

10 Q. Okay. Now, tell us about the quantities that you were
11 dealing with Mr. Ballard once you started in 2009.

12 A. Started with a half an ounces, then I would go up to an
13 ounce or two.

14 Q. An ounce or two?

15 A. Yeah, here and there I would.

16 Q. So a half ounce was the least amount you bought.

17 A. Right.

18 Q. And two ounces was the most?

19 A. Two, maybe three.

20 Q. Two, maybe three? All right. And how often -- how long
21 did you purchase cocaine from Mr. Ballard? Was it always
22 powder cocaine?

23 A. Yes.

24 Q. Okay. How long did you purchase in these quantities
25 cocaine from Mr. Ballard?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. From 2009 up to 2012.

2 Q. And why -- what happened in 2012?

3 A. He got arrested.

4 Q. Now, you mentioned Ancrum Lane. When you would meet --

5 Well, the first time you met with Mr. Ballard, where exactly
6 on Ancrum Lane did y'all meet?

7 A. We would meet right there under a little hang out.

8 Q. Under a hang out?

9 A. Yeah.

10 Q. Well --

11 A. Under the tree, we would call it.

12 Q. Okay. And so he would sit under a tree and you'd meet him
13 there?

14 A. Yes.

15 Q. And when you conducted your drug transactions with
16 Mr. Ballard, were other people present from time to time?

17 A. From time to time, people might be out there.

18 Q. Okay. And beginning in July or August of 2009 when you
19 started buying that half ounce from him, how often would you
20 buy from Mr. Ballard those quantities of cocaine?

21 A. Weekly.

22 THE COURT: What was your answer to that?

23 A. Weekly.

24 Q. Do you know how -- do you know how -- approximately how
25 much total you bought from Mr. Ballard?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. As far as what?

2 Q. The weight. Do you know how much total --

3 A. Over the time?

4 Q. Over the time period, yes, sir.

5 A. No, I'm not sure.

6 Q. Okay. Now, during your dealings with Mr. Ballard under
7 the tree -- Well, is that the only place you dealt with him?

8 A. Yes.

9 Q. Had you ever seen him with a firearm during your dealings,
10 drug dealings with him?

11 A. I saw him with a chrome gun.

12 Q. How often did you see that gun?

13 A. Whenever I would see him, talk to him in the truck or
14 whatever.

15 Q. And where would he keep it?

16 A. Just in the middle part.

17 Q. All right. Did you ever do --

18 THE COURT: Kept it where?

19 A. In the middle console of his truck.

20 THE COURT: Where?

21 A. The middle console of the truck.

22 THE COURT: Okay.

23 BY MR. PHILLIPS:

24 Q. And then you saw --

25 A. Yes, sir.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. Now, you've reviewed -- One moment, please. Now, do you
2 have a street name that you're aware of?

3 A. Cheddar.

4 Q. Now, when you purchased this cocaine, you mentioned that
5 you cut it. Did you ever turn it into crack cocaine?

6 A. Yes, from time to time, yes.

7 Q. How would you do that?

8 A. I would cook it.

9 Q. And just briefly, I know -- briefly just explain how you
10 cooked crack cocaine.

11 A. I would put it in a microwave with baking soda and cook
12 it.

13 Q. And then what would you do when it came out of the
14 microwave?

15 A. Sell it.

16 Q. You would take it out of the microwave and package it and
17 sell it, or did you do anything else? Was there another step?

18 A. No.

19 Q. Okay. Now, during this time when you were dealing with
20 Mr. Ballard, did you ever discuss with him that you were
21 cutting the cocaine or turning it into crack?

22 A. Yes.

23 Q. So he knew you were doubling it?

24 A. Yes.

25 Q. Now, during the course of your involvement in this case

STEVEN MOSLEY - DIRECT EXAMINATION

1 you've listened to phone calls that were recorded between you
2 and Mr. Ballard, is that right?

3 A. Yes.

4 Q. And if you could listen to -- this is call number 502,
5 from October 7, 2011, and it is Exhibit 9 H.

6 (Audio recording was played.)

7 Q. We're going to continue to play that, but -- that call,
8 but I have a couple questions. So you recognize the voices on
9 that call?

10 A. Yes.

11 Q. Who was on that call?

12 A. That's mine and Mr. Ballard.

13 Q. And in the first part of that call y'all talk about
14 someone from Hollywood. Do you recall what that discussion
15 was about?

16 A. No, not right off, no, I don't.

17 Q. Then the conversation turns to a gray Crown Vic and you
18 say dark gray. What were y'all talking about there?

19 A. An undercover police car.

20 Q. And he was telling you they were on 78?

21 A. Yes.

22 Q. What's 78?

23 A. Highway 78.

24 Q. And you stated that, "Over there on fire," what did you
25 mean by that?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. A lot of police over there.

2 Q. Okay. Now, during this time you were working for the Town
3 of Summerville?

4 A. Yes.

5 Q. Did you ever provide Mr. Ballard with information about
6 police cars?

7 A. Yes, one time.

8 Q. Pardon me?

9 A. Yes.

10 Q. Did you say -- Tell us what you told him.

11 A. I told him about a white Tundra.

12 Q. And who did that white Tundra belong to?

13 A. I believe the Town of Summerville undercovers.

14 Q. Undercover what?

15 A. Police.

16 Q. And did he ask you for that information?

17 A. Yes.

18 Q. And we'll play the rest of the call.

19 (Audio recording was played.)

20 Q. The rest of that call sounds like y'all talking about
21 football. Is that what y'all talking about?

22 A. Yes.

23 Q. Summerville High School football?

24 A. Yes.

25 Q. So in the rest of that call what you're talking about is

STEVEN MOSLEY - DIRECT EXAMINATION

1 what you're talking about.

2 A. Right.

3 Q. Now we're going to move on to another call, this is
4 Government's Exhibit 9 F. This call occurred on October 10,
5 2011. If you'd listen to this, then I have some questions for
6 you.

7 (Audio recording was played.)

8 Q. Do you recognize the voices on that phone call?

9 A. Yes, that's me and Mr. Ballard.

10 Q. And when it states -- "Well, leaving out the barber shop
11 and you heading on that dirt road," what dirt road were y'all
12 referring to?

13 A. Ancrum Lane.

14 Q. And just while we're on that, can you just briefly
15 describe to the Court where Ancrum Lane is located?

16 A. Off Old Orangeburg Road.

17 Q. In Summerville?

18 A. Yes.

19 Q. Now, when it states yeah, he already got that money, was
20 that Mr. Ballard?

21 A. Excuse me?

22 Q. When it states you had already got that money, that was
23 Mr. Ballard speaking?

24 A. Yes.

25 Q. And just tell us what this call's about.

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. It's about drugs.

2 Q. Had you ordered drugs from him?

3 A. Yes, I was trying to purchase some.

4 Q. Now, when it says let me owe you that stack 13, that's you
5 speaking?

6 A. Yes.

7 Q. And what were you talking about there?

8 A. Owing him some money.

9 Q. How much?

10 A. I believe like 1300.

11 Q. And why did you need to owe him \$1300?

12 A. For the drugs.

13 Q. Okay. How much drugs were you getting at this point? I
14 mean how much drugs were you ordering in this call?

15 A. In that call, an ounce.

16 Q. Okay. And stack, what does that mean?

17 A. Thousand dollars.

18 Q. So when you asked whether you could owe it, were you
19 asking him to front you the drugs?

20 A. Yes.

21 Q. Now, typically did you have to pay for the drugs in full,
22 or did he front you drugs or give you drugs on consignment?

23 A. Most of the time I would pay it in full.

24 Q. Okay. But occasionally would you be able to --

25 A. Yes.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. And when you said I'll give you something, I'll give you
2 something for that, he's talking about the cocaine?

3 A. Yes.

4 Q. All right. I'm going to move to the next call. And this
5 is call number 1261, it's Government's Exhibit 9 E. And it's
6 from October 10th, 2011.

7 (Audio recording was played.)

8 Q. Do you recognize the voices on that call?

9 A. Yes.

10 Q. Who's on that call?

11 A. Me and Mr. Ballard.

12 Q. And the individual states, "you know this 76 that you gave
13 me last night, you know that, right?" Is that Mr. Ballard?

14 A. Yes.

15 Q. And what is he talking about?

16 A. Some money I borrowed from him in the purchase of some
17 drugs also.

18 Q. And so how much money did you borrow from him?

19 A. I borrowed \$7000 from him.

20 Q. And what was that for?

21 A. At the time I was trying to get a house.

22 Q. What were you going to do with that 7000?

23 A. I was going to put it in my bank account.

24 Q. For a downpayment?

25 A. At the time it was like a -- when they want to track the

STEVEN MOSLEY - DIRECT EXAMINATION

1 money to make sure you have it in the account before closing,
2 like a paper trail.

3 Q. Okay. Now, how did he give you that \$7000?

4 A. Cash.

5 Q. And you said it was also for drugs as well, you owed him
6 for drugs?

7 A. Yes.

8 Q. And how much did you owe him for drugs?

9 A. Seven hundred.

10 Q. All right. And then so when he's asking -- when he's
11 telling you it's 76 and you tell him it was 77, what's going
12 on there?

13 A. He was saying it's a hundred dollars short.

14 Q. Now, did you go and meet with him?

15 A. Yes.

16 Q. What happened when y'all met?

17 A. Gave him the hundred dollars.

18 Q. The next call is Government's Exhibit 9 G, call 1498.

19 (Audio recording was played.)

20 MR. PHILLIPS: We're going to pause it, then we'll
21 continue to play it.

22 Q. Do you recognize the voices on this call?

23 A. Yes.

24 Q. And whose voices are on the call?

25 A. Me and Mr. Ballard.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. And the person that says, "Checking low. You done make
2 something happen yet? I make something happen every day, well
3 hell come pay the man that you owe," who was that?

4 A. Mr. Ballard.

5 Q. And the person that said, "Goddamn you call me for \$300,"
6 who was that?

7 A. Me.

8 Q. And what were y'all talking about?

9 A. Money that I owe him for drugs.

10 Q. And specifically powder cocaine?

11 A. Yes.

12 Q. Do you recall how much this transaction was for?

13 A. No, not at the time.

14 MR. PHILLIPS: We'll play the rest of the call.

15 (Audio recording was played.)

16 BY MR. PHILLIPS:

17 Q. So the person stating, "Don't find the reason out why no
18 one will be able to say that the rest of the year, don't you
19 be the person," is that Ballard?

20 A. Yes.

21 Q. And what's he talking about there?

22 A. Don't be the reason to find out for trouble.

23 Q. Is that regarding paying him the money back?

24 A. Yes.

25 Q. Now, he's the one that says, "All that thing needs is some

STEVEN MOSLEY - DIRECT EXAMINATION

1 gas in it," that's Mr. Ballard?

2 A. Yes.

3 Q. And you said, "Oh, yeah, yeah, it's real start -- real
4 start --" What did you say, oh yeah?

5 A. Yes, that's me.

6 Q. "It's real decent."?

7 A. Yes.

8 Q. What were y'all talking about?

9 A. Cocaine.

10 Q. And what specifically were you talking about?

11 A. Cooking it.

12 Q. Cooking it?

13 A. Yes.

14 Q. We're going to continue playing it.

15 (Audio recording was played.)

16 BY MR. PHILLIPS:

17 Q. So when you said, "It's real decent," what were you
18 talking about regarding the cocaine?

19 A. Cooking it into gains.

20 Q. Into gains?

21 A. Yeah, gains off of it.

22 Q. Were you talking about the quality of the cocaine?

23 A. Yes.

24 Q. Tell the Court, if you have good quality cocaine and you
25 cook it, what does that mean for you?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. It increases more.

2 Q. And Mr. Ballard said that, "I have that doing something
3 stupid last night. I'll tell you when I see you." And then
4 he states, "I got some of the fresh drank soda." What did you
5 take that to mean?

6 A. Baking soda.

7 Q. And when he said, "That MF-er got ballistic on a boy,"
8 what did you understand that to mean?

9 A. It did real good.

10 Q. When you say it did real good, what do you mean?

11 A. That cocaine came back good. Did good in the cooking.

12 Q. When you're cooking cocaine and it's a good quality, if
13 you cooked an ounce, what could you expect for good quality
14 for it to increase to?

15 A. Double.

16 Q. Okay. All right, we'll play the rest of the call.

17 (Audio recording was played.)

18 BY MR. PHILLIPS:

19 Q. All right. Now, before we shift gears, you said that you
20 were buying from Mr. Ballard up until his arrest in this case,
21 is that right?

22 A. Yes.

23 Q. Did you continue selling drugs after that?

24 A. Yes.

25 Q. Who were you getting your drugs from?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. Michael Williams.

2 Q. Now, how did you know Michael Williams?

3 A. I met him, you know, just out on the street.

4 Q. Okay. And what were you buying from him?

5 A. Half ounce, ounces.

6 Q. And when did you stop buying from him?

7 A. When I was arrested.

8 Q. Now, in your case you sold to an informant, is that right?

9 A. Yes.

10 Q. And whose cocaine was that?

11 A. Michael Williams.

12 Q. And when that occurred, had Mr. Ballard already been
13 arrested?

14 A. Yes.

15 Q. Okay. Now, during your involvement of this case did you
16 ever learn that Mr. Ivory Brothers -- Do you know who
17 Mr. Brothers is?

18 A. Now, yes.

19 Q. How do you know him now?

20 A. A guy in this case.

21 Q. Okay. And did you learn that he was cooperating in this
22 case?

23 A. Yes.

24 Q. And did you learn that he had been shot?

25 A. Yes.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. When did you find out approximately he had been shot?

2 A. I would say the day after it happened.

3 Q. Who told you? Well, just tell us who told you, don't tell
4 me what they said.

5 A. A friend of mine called me and told me.

6 Q. Now, before we switch gears, what kind of cars during this
7 period did you drive?

8 A. White Town Car, Expedition and an Escalade.

9 Q. What color is the Escalade?

10 A. White.

11 MR. PHILLIPS: Your Honor, if we could have five
12 minutes, I want to make sure we have these transcripts
13 straight so they can follow along.

14 THE COURT: We'll just be at ease.

15 MR. PHILLIPS: Thank you.

16 (Brief interruption in proceedings.)

17 MR. PHILLIPS: Your Honor, we're handing up some
18 transcripts. Some of these will be on the screen, but they --
19 we're handing up some transcripts that some of those didn't
20 make it into our notebook, can be added to the notebook, and
21 some will be on the screen, but some were made -- just
22 recently finished. So we want to hand you those. Those are
23 the calls we're about to go over.

24 THE COURT: All right.

25 MR. PHILLIPS: If the Court please, we're ready to

STEVEN MOSLEY - DIRECT EXAMINATION

1 return.

2 BY MR. PHILLIPS:

3 Q. Now, Mr. Mosley, you talked about you were arrested in
4 this case.

5 A. Yes.

6 Q. And at some point -- well, at some point you decided that
7 you were going to cooperate.

8 A. Yes.

9 Q. When did you meet with the DEA or decide to cooperate,
10 start cooperating?

11 A. January 3rd.

12 Q. What year?

13 A. 2014.

14 Q. And after you did that, did you have contact with
15 Mr. Ballard?

16 A. Yes.

17 Q. Tell us how that -- tell us about that first contact after
18 you cooperated.

19 A. We spoke on the phone, and he went to jury selection and
20 heard my name called.

21 Q. So up until that point, were you set to go to trial?

22 A. Yes.

23 Q. And he told you that your name was called? Your name was
24 called during jury selection?

25 A. Yes.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. Now, after you cooperated, did you meet with him?

2 A. Yes.

3 Q. And what happened when y'all met?

4 A. Met with him at visitation at the jail.

5 Q. What did you talk to him about?

6 A. The meeting.

7 Q. The meeting with who?

8 A. The agents.

9 Q. And what was Mr. Ballard's reaction?

10 A. He said that I had messed up.

11 Q. Was he angry?

12 A. Yes.

13 Q. Did he threaten you in any way?

14 A. No.

15 Q. Now, you also spoke to him on the phone while he was in
16 the jail about this matter.

17 A. Yes.

18 Q. And we're going to play some phone calls and go through
19 that. Now, when you met with him, did he -- he was angry with
20 you and said you messed up. Did he tell you anything else
21 that you needed to do?

22 A. He told me to write a letter.

23 Q. Was that during the meeting when you first told him?

24 A. No, that was a few days after.

25 Q. Meaning on the phone?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. Yes.

2 Q. Okay.

3 MR. PHILLIPS: Just one moment, the audio's coming
4 up, Your Honor. And, Your Honor, for everyone's benefit, this
5 one is not going to be on your screen. If you want to follow
6 the transcript, it's the hard copy that we passed up. This
7 first call didn't make it to the presentation.

8 THE COURT: I have it.

9 MR. PHILLIPS: This call 1935 is what we're calling
10 it, it's part of Exhibit 15.

11 (Audio recording was played.)

12 BY MR. PHILLIPS:

13 Q. Do you recognize the voices on that call?

14 A. Yes.

15 Q. Who do you hear on that call?

16 A. Davis and Martin Ballard.

17 Q. Who's Davis?

18 A. Anthony Davis.

19 Q. And how do you know him?

20 A. From being with Martin Ballard.

21 Q. And what nicknames does Davis have?

22 A. Buggy.

23 Q. That's how you know him?

24 A. Yes.

25 Q. Did Mr. Ballard have any nicknames?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. Lou.

2 Q. Okay. All right. We'll continue the call.

3 (Audio recording was played.)

4 Q. Do you recognize the voices on this part of the call?

5 A. Yes.

6 Q. Whose voices are they?

7 A. Mine and Mr. Ballard.

8 Q. All right. And who said, "I done -- I'll not say the
9 word, but -- done well -- I'll say the word -- I done fuck it
10 up, huh?" Who was that?

11 A. That was me.

12 Q. What were you referring to?

13 A. I was referring to talking with the agents.

14 Q. And then when -- after that, is it Mr. Ballard that said,
15 "Your people might not like it, but that's what it's going
16 for." And this is on page three of the transcript, lines five
17 through six. "But your people might not like it, but that's
18 what it's going -- what it going for." Do you know what he
19 was talking about there?

20 A. My attorney.

21 Q. You're stating your attorney wouldn't like it?

22 A. Right.

23 Q. Wouldn't like what?

24 A. If I was to reject the -- reject -- I mean go back on my
25 word.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. Okay. To go back on what you had told the agents?

2 A. Yes.

3 (Audio recording was played.)

4 Q. And in that portion of the call Mr. Ballard says, "It's
5 guidelines and that's how it go bottom line." This is page
6 three of the transcript, line 19. "You put that there. Now
7 you got to kill it now," to line 20.

8 What was he referring to in that part of the call?

9 A. The amount of cocaine I talked with the agents.

10 Q. All right. And when he said you have to kill it now, what
11 did you take that to mean?

12 A. Go back on it.

13 Q. Go back on it?

14 A. Yeah, go back on what I told them.

15 (Audio recording was played.)

16 Q. All right, this is page four of the transcript.
17 Mr. Ballard states, "That's how they did the first N word from
18 the start with. These are the ones you made it." Do you know
19 who he was referring to?

20 A. Brothers.

21 Q. And what about Brothers, that he was cooperating?

22 A. Yes.

23 Q. And then later Mr. Ballard says, "Your thing was so much
24 better because I didn't go on you." That's lines 15 through
25 16 on page four of the transcript. "That N word went on all

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1 them people from that country. He went in with them, so they
2 know who they was. I ain't went in. You made your number."
3 What was he talking about there?

4 A. The amount of cocaine.

5 Q. And when he said he went on all them people from that
6 country, do you know who he was talking about?

7 A. Brothers.

8 Q. And when he said, "I didn't go on you," what did he mean?

9 A. He didn't tell on me.

10 Q. And he didn't tell on you about what?

11 A. The cocaine.

12 Q. The fact that y'all been dealing with each other?

13 A. Yes.

14 Q. And he said, "You made your number. You ain't had no
15 number." What did he mean?

16 A. That I gave my own self a number -- I mean the amount of
17 cocaine I had.

18 Q. And -- Okay.

19 (Audio recording was played.)

20 Q. Now we're still on page four of the transcript. Is that
21 you that stated, "You think I should -- you think I should
22 just hold out till they waiting on it, then F them up that
23 way?"

24 A. Yes.

25 Q. Now, what did you mean by that?

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1 A. Blowing the trial.

2 Q. And how were you going to blow the trial?

3 A. When trial started, had a letter.

4 Q. Now, when you were telling him this, when you were
5 suggesting this, to wait and blow the trial, did you intend to
6 actually do that?

7 A. No.

8 Q. Did you intend to stop cooperating?

9 A. No.

10 Q. So were you telling -- during these discussions about
11 taking back your statement, were you telling Mr. Ballard the
12 truth, that you were going to actually take back your
13 statement?

14 A. No, I was lying.

15 Q. Why was that?

16 A. I wanted -- for family, for my family to be safe.

17 Q. Say it again?

18 A. My family to be safe.

19 Q. So you were fearful for your family?

20 A. Yes.

21 Q. Why were you fearful for your family?

22 A. I didn't want anything to happen to them.

23 Q. And that was because of what?

24 A. Because of all the stuff that was going on at the time.

25 Q. Your cooperation against Ballard?

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1 A. Yes. Yes.

2 (Audio recording was played.)

3 Q. All right. So now we're on page five of the transcript.

4 Now, you stated, "I had a plan though. I got something up I'm
5 going work through." Right?

6 A. Excuse me?

7 Q. You said you had a plan that you were going to work
8 through, something you were going to work through.

9 A. Yes.

10 Q. And did you really have a plan?

11 A. No.

12 Q. Okay. Now, when he said, "It come on that black fucker --
13 right after -- when you talked and shit did nothing," who was
14 he referring to?

15 A. Him.

16 Q. Did he refer to himself as that in y'all's calls?

17 A. Yes.

18 Q. And then later, in line 20 to 22, he says, "They just need
19 more point to come with some of the same type similar story so
20 when it's time for them to point and talk on that day in
21 March, that's what they need, more people on that." What did
22 you understand him to be talking about?

23 A. More people for the trial.

24 Q. Do you recall when the trial was set? That time?

25 A. March 10th.

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1 Q. Okay. And then when he states, this is page six, line two
2 through four, "You just got to just tell your damn people,
3 man, you ain't going with that. That's all to it, because I'm
4 still going. This what they going to do if you still like
5 that, we ain't going to let you get nothing if you don't come
6 in. You dig?" What was he referring to, who was your damn
7 people?

8 A. My wife.

9 Q. Okay. And you ain't going with that, what did he want you
10 to do?

11 A. Take back, take it back, what I said to the agents.

12 (Audio recording was played.)

13 Q. Is that Mr. Ballard that said, "There ain't no way in the
14 world I could have laid anything on you, nothing."?

15 A. Yes.

16 Q. What was he talking about?

17 A. Cocaine.

18 Q. Well, what do you mean?

19 A. As far as telling on me.

20 Q. So he was saying he wouldn't -- there's no way in the
21 world he would tell on you?

22 A. Right.

23 (Audio recording was played.)

24 Q. Now, when he's talking about "How would you pay an MF-er
25 to cooperate," what's he talking about?

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1 A. My lawyer.

2 Q. Did you retain your lawyer?

3 A. Yes.

4 Q. Did you originally have a public defender prior to that?

5 A. Yes, for the start, yes.

6 Q. But you went and got your own lawyer and paid?

7 A. Right. Yes.

8 Q. And when he said, "You could have saved them chips," what
9 is he talking about?

10 A. I could have just kept the public defender.

11 Q. If you were to do what?

12 A. Cooperate.

13 Q. Okay. Let's continue, please.

14 (Audio recording was played.)

15 Q. Now, we're on page eight of the transcript, line 21. Is
16 that Mr. Ballard who says, "Why would he put himself in
17 something else? I ain't putting him in there, you know?"

18 A. Yes.

19 Q. What's he talking about?

20 A. Repeat it one more time.

21 Q. He says, "Why would he put himself in something else? I
22 ain't putting him in there, you know?" What is he talking
23 about?

24 A. He was talking about me as far as referring to if the
25 roles were different.

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1 MR. PHILLIPS: Please continue.

2 (Audio recording was played.)

3 Q. I'm on page nine of the transcript. When he says he can
4 "show you a scale like where your point level is, your
5 history, that's all -- that's all you get your time for,
6 history and your F-ing level," and the transcript is in
7 audible. Can you tell what he says there?

8 A. He's talking about as far as the guidelines.

9 Q. And what was your understanding regarding the guidelines
10 and what he's talking to you about?

11 A. The Sentencing Guidelines.

12 Q. And what is he telling you here that all you get your time
13 for history and your level, what was he talking about?

14 A. I'll be sentenced on my guideline range.

15 Q. And what is your guideline range based on?

16 A. My history.

17 Q. And what else?

18 A. And that's all. I mean that's all I know.

19 Q. Okay. What about the quantity of drugs?

20 A. Yeah, quantity of drugs, yes.

21 MR. PHILLIPS: Let's continue.

22 (Audio recording was played.)

23 MR. PHILLIPS: All right. We're going to play
24 another call. This is January 11th, this is also part of
25 Exhibit 15.

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1 (Audio recording was played.)

2 BY MR. PHILLIPS:

3 Q. Do you recognize those voices?

4 A. Yes.

5 Q. Who are they?

6 A. Martin Ballard and Anthony Davis.

7 Q. We're on page two of the transcript for this call, 2036,
8 noted on January 11, 2014. And we'll continue on.

9 (Audio recording was played.)

10 Q. Now, do you recognize that new voice?

11 A. That's me and Mr. Ballard.

12 Q. Okay. And that's Mr. Ballard who's on page three,
13 paragraph eight, line eight down, talking about waiting until
14 the time what you been thinking about doing, is that him?

15 A. Yes.

16 MR. PHILLIPS: We can continue.

17 (Audio recording was played.)

18 Q. Now, we're on page four of the transcript, line 16. "You
19 should have said -- you should have said don't fuck with
20 that." Is that you?

21 A. Yes.

22 Q. What were you talking about?

23 A. The meeting with the agents.

24 Q. And Mr. Ballard says, on line 18, "I had tell you that. I
25 tell you that. Not me, I told you not me. I did." What was

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1 he talking about?

2 A. Talking about him with the agents.

3 Q. Had he told you not to talk about him to the agents?

4 A. Yes.

5 Q. Prior to this?

6 A. Yes.

7 (Audio recording was played.)

8 Q. We're on page five of the transcript, line four. He asked
9 you how Big TB looking since he came over. Do you know who
10 he's talking about?

11 A. Torian.

12 Q. Torian who?

13 A. I can't recall his name.

14 Q. And what is he talking about Torian?

15 A. How he cooperated, he don't look the same.

16 Q. What does he mean he don't look the same?

17 A. He just can't live a regular life.

18 Q. Why is that?

19 A. Because he cooperated.

20 Q. Well, what was the consequence of the cooperating or why
21 he can't live a normal life?

22 A. Because he cooperated.

23 Q. How has that changed his life, as you understand it?

24 A. He just can't, you know, I guess can't go places like he
25 used to.

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1 Q. All right. Let's continue.

2 (Audio recording was played.)

3 Q. We're on page five of the transcript. He says, "I told
4 you that," this is line 16 -- line 17, "you know what I mean?
5 What the hell you think I been telling you? I tell you this
6 shit about the boy on the dirt road, you said his daddy just
7 died. That's what I been thinking. You know what I'm saying?
8 You're like, okay, so you could still get that little shit.
9 That's what I been thinking you was doing."

10 What was he talking about there?

11 A. I can't recall that at this time.

12 Q. Okay. But you did talk -- prior to going in to meet with
13 the agents, did you talk to Mr. Ballard and tell him you were
14 going to do that?

15 A. Yes.

16 Q. And did he tell you what you could and couldn't talk
17 about?

18 A. Yes.

19 Q. And did he tell you any specifics, people you should talk
20 on?

21 A. No, he just told me just don't tell on him.

22 Q. Okay.

23 (Audio recording was played.)

24 Q. We're on page six of the transcript here. When he says,
25 "You add that up. Line 11. How many years that is from that

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1 year until when, 12? There ain't nothing low about that."

2 Line 14. What's he talking about?

3 A. The amount of cocaine. I told the agents.

4 Q. Okay.

5 (Audio recording was played.)

6 Q. We're on page eight of the transcript, line 23.

7 Mr. Ballard says, "There's a way to clear this shit up and
8 keep the shit gangster." What was he talking about?

9 A. I believe as far as me writing a letter.

10 Q. And what was the purpose of that?

11 A. So I'll be taking back what I told the agents.

12 Q. And then on page nine you say, "He put it on FaceBook."
13 Who were you talking about and what were you talking about?

14 A. When I cooperated.

15 Q. What happened on FaceBook?

16 A. Someone put it on FaceBook.

17 Q. That you were cooperating?

18 A. Yes.

19 Q. And what did that -- how did that make you feel?

20 A. Not too good.

21 Q. Why?

22 A. Because it put my family in danger.

23 MR. PHILLIPS: You can continue, please.

24 (Audio recording was played.)

25 Q. Now we're on page 12 of the transcript. Mr. Ballard tells

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1 you, "Just keep it low, stay low out there and keep it cool,
2 ain't no time to be going out, you know, we'll now be low."
3 What did you understand that to mean?

4 A. Just wait till things blow over.

5 MR. PHILLIPS: Now we're going to move on to the next
6 call. And, Your Honor, the next call is January 14th, 2014,
7 this is also part of Exhibit 15.

8 THE COURT: Mr. United States Attorney, you don't
9 think I could keep up with who these people are, what they're
10 talking about?

11 MR. PHILLIPS: Yes, Your Honor, that's why I'm trying
12 to stop it and go through. I was letting some of it play just
13 because I wasn't interested in part of it, but they had asked
14 I play all of it. But if you'd like me to be more specific,
15 I've been highlighting passages, but --

16 THE COURT: Well, it's your case, but I just
17 wondered, since I guess you're introducing this --

18 MR. PHILLIPS: Yes, sir, and I'm introducing the
19 transcripts as well.

20 THE COURT: So what you want me to do is, I assume,
21 is look this over.

22 MR. PHILLIPS: Yes, sir.

23 THE COURT: Well, do you need -- if you want me to
24 look the whole thing over, what are you gaining by playing it
25 and putting --

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1 MR. PHILLIPS: Your Honor --

2 THE COURT: Other than him stopping it at times, I
3 can understand you might want to stop, you know, in one
4 particular thing, but you're just putting him -- 90 percent of
5 this thing is going in here, or maybe not 90, but just a lot
6 of dirty words and dirty talk.

7 MR. PHILLIPS: Yes, Your Honor, there are particular
8 portions I'm interested in, but Mr. Theos had talked to me, we
9 hadn't agreed on every case, but because there was a lot of it
10 that was pertinent, he had asked that we play the whole thing
11 or he was going to object if we didn't play the whole thing.

12 THE COURT: That's a different matter. I didn't know
13 that.

14 MR. PHILLIPS: That's why we're going through this
15 exercise. But I'll try to do a better job of highlighting,
16 from our perspective, what we'd like the Court to look at,
17 then obviously they'll highlight what they want you to look
18 at, I assume.

19 THE COURT: All right.

20 MR. PHILLIPS: So now we're on January 14, 2014,
21 Exhibit 15, we've noted as call 1054 and begins on page two of
22 the transcript.

23 (Audio recording was played.)

24 THE COURT: What page are you on? Where are you in
25 this book?

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1 MR. PHILLIPS: These are the transcripts we handed
2 up.

3 THE COURT: I've got --

4 MR. PHILLIPS: That's on page two.

5 THE COURT: I have page two, but I got the wrong page
6 two. Whose conversation -- Why is this sheet number one?

7 MR. PHILLIPS: I can ask him right now.

8 BY MR. PHILLIPS:

9 Q. Do you recognize the voices on this phone call?

10 A. Yes.

11 Q. Who was talking?

12 A. Martin Ballard and Anthony Davis.

13 MR. PHILLIPS: And, Your Honor, this is call
14 January 14, 2014.

15 THE COURT: I was looking at the right one,
16 apparently. Is this the one that's headed United States
17 against Martin Lewis Ballard and Charles Anthony Sanders,
18 January 14, 2014, 1054?

19 MR. PHILLIPS: Yes, sir.

20 THE COURT: That's the right one, I just couldn't
21 pick him up.

22 MR. PHILLIPS: Would you like us to start over so you
23 can follow it?

24 THE COURT: No, I don't need you to start over, just
25 tell me where you are.

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1 (Brief interruption in proceedings.)

2 MR. PHILLIPS: We're now on page three, just said
3 "with my people, so when I spit --"

4 THE COURT: I see the words "your people."

5 MR. PHILLIPS: Page three at the top, "my people."

6 THE COURT: All right, sir, go ahead.

7 (Audio recording was played.)

8 MR. PHILLIPS: A few questions.

9 BY MR. PHILLIPS:

10 Q. Who are the voices you hear at this point in the call?

11 A. Martin Ballard and mine.

12 Q. And when he asked you in line 14, this is page four of the
13 transcript, line 14, "You ain't no -- went nowhere yet to say
14 anything else on that thing," and you answered "No," on line
15 17, what are y'all talking about?

16 A. The agents.

17 Q. He's asking you whether you talked to the agents again?

18 A. Yeah, the agents, um-hum.

19 MR. PHILLIPS: Then we'll continue.

20 (Audio recording was played.)

21 Q. We're on page five at the top, line one. "You know you
22 got to come in and point, point at that -- line two -- that
23 little black MF-er," who was he referring to?

24 A. Himself.

25 Q. And what was he talking about pointing?

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1 A. On trial. At trial.

2 Q. That you were going to come in at trial --

3 A. Yes.

4 Q. -- and talk about him?

5 A. Yeah, I would have to, yes.

6 MR. PHILLIPS: We'll continue.

7 (Audio recording was played.)

8 Q. Now, at line eight he says, "Well, peep the move. How you
9 feel about doing that though?" Did you know he was talking
10 about peep the move?

11 A. No.

12 Q. But he says, "How you feel about doing that?" What was he
13 referring to?

14 A. Going to trial.

15 Q. Blowing the trial by your testimony?

16 A. Yes.

17 (Audio recording was played.)

18 Q. In line 20 it talks about the squirrel, nasty little
19 squirrel, what's he talking about?

20 A. The fellow who set me up, the informant.

21 Q. That was for the controlled buy?

22 A. Yes.

23 MR. PHILLIPS: Please continue.

24 (Audio recording was played.)

25 Q. On page six of the transcript Mr. Ballard states, "Now, on

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1 the backlash of all this if you come through, they're still
2 only going to be able to hit with the regular, the initial
3 stuff." What was he talking about?

4 A. The controlled buy.

5 Q. And so he was telling you that was -- if you backed out,
6 that that's all you'd be heard on at sentencing?

7 A. Yes.

8 (Audio recording was played.)

9 Q. We're still on page six, this is lines 23 through 25, he
10 says, "What's the word I'm trying to think of." Let me back
11 up. Line 21. "But with not having no damn -- let me see
12 what's the word I'm trying to think of -- this is
13 Mr. Ballard -- you know what I used to have all the time? You
14 know what I'm saying?" What was he talking about, what did
15 you understand him to be talking about?

16 A. Cocaine.

17 Q. That's what he used to have all the time?

18 A. Yes.

19 MR. PHILLIPS: Now we're going to be on page seven.

20 (Audio recording was played.)

21 Q. So we're on page seven of the transcript, and he says --
22 Mr. Ballard says in line eight, "You already know you
23 confirmed you going to do good." Then on line 12 he says,
24 "Your whole shit will be situated while you -- if that come
25 that far, that --" and then line 14 "-- that thing we ride up

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1 there to see the game in, I'll take care of all of that,
2 everything through your sister or whatever, you know what I'm
3 saying?" What was he talking about, what did y'all ride up to
4 the game in?

5 A. My Escalade.

6 Q. And he was saying he would take care of all of that, what
7 did you understand him to be telling you?

8 A. After sentencing, if I go to jail he'd take care of my
9 bills.

10 MR. PHILLIPS: Okay. Please continue.

11 (Audio recording was played.)

12 Q. So we stopped on page eight of the transcript and he tells
13 you, "Play like you going to point." What is he talking
14 about?

15 A. Coming to trial.

16 Q. And what does he mean, play like you're going to point?

17 A. Testify against him.

18 Q. Now, the initial calls, these jail calls that we talked
19 about, y'all talk about almost immediately going to tell your
20 lawyer that you recanted your statement; that was the initial
21 plan, right?

22 A. Yes.

23 Q. And by this time, by these last two calls, had the plan
24 changed?

25 A. Yes.

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1 Q. What was the new plan?

2 A. To blow the trial.

3 Q. And so were you going to pretend to be cooperating until
4 the day of trial?

5 A. That's what he wanted me to do, yes.

6 (Audio recording was played.)

7 Q. We're still on page eight, line 14, Mr. Ballard tells you,
8 "They don't care, because if they really care, they would had
9 said, look here, let me put you up in this spot where that
10 other MF-er at out of town." What was he talking about there?

11 A. Me moving, having -- having y'all put me up, the agents.

12 Q. Having who put you up?

13 A. The agents.

14 Q. And why?

15 A. For cooperation. For my cooperation.

16 Q. Had you -- during this time did you express concern about
17 your safety to our office and to the agents?

18 A. Yes.

19 Q. And was any offer made to you to move you?

20 A. Yes.

21 Q. And did you take us up on that offer?

22 A. No.

23 Q. Now, when he says that they'll put you up in a spot with
24 that other guys out of town, do you know who he was talking
25 about?

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1 A. Yes.

2 Q. Who?

3 A. Brothers.

4 THE COURT: Who?

5 A. Brothers.

6 MR. PHILLIPS: All right, please continue.

7 (Audio recording was played.)

8 Q. We're at the top of page ten. When they talk about
9 someone being downgraded, what was he talking about?

10 A. Herschel Tanner.

11 Q. Who is Herschel Tanner?

12 A. One of the agents.

13 Q. And what did you understand that to mean, what was he
14 telling you?

15 A. He's no longer an agent, he works for the Town of
16 Summerville.

17 Q. As a police?

18 A. Yes.

19 MR. PHILLIPS: Please continue.

20 (Audio recording was played.)

21 Q. We're on page ten at the middle and he's telling you,
22 "Ain't got to take a quarter more, tell them that times are
23 hard," what was he talking about there?

24 A. Paying my attorney.

25 Q. So he was telling you not to pay your attorney any more?

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1 A. Right.

2 MR. PHILLIPS: Please continue.

3 (Audio recording was played.)

4 Q. Okay. So we're on the bottom of page ten -- Mr.
5 Ballard -- line 25. "I ain't going to keep -- then we go over
6 to page 11, line one, "-- can't really say so much on here,
7 but unless you want to come up here today in that name. You
8 know what I'm saying? Or you do think that's a good idea?
9 What you think?" And you respond, "No, let's just keep it
10 clean just to be on the safe side." When he said, "I can't
11 really say much on here, but unless you want to come up here
12 today in that name," what was he talking about?

13 A. Coming to visit him under another name.

14 Q. Another name? You would put a different name down?

15 A. No, he would.

16 Q. Tell the Court what he was talking about.

17 A. When I come to visit him, ask for a different person.

18 Q. All right. And had that been -- where did that -- well,
19 is this the first time you had heard about that plan --

20 A. Yes.

21 Q. -- from Mr. Ballard?

22 A. Davis called me and told me to go see him.

23 MR. THEOS: Your Honor, I object to what someone else
24 may have told him.

25 MR. PHILLIPS: Well, okay.

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1 BY MR. PHILLIPS:

2 Q. Prior to that, did you learn -- he says, "Come up here
3 today in that name." Do you know what name he was referring
4 to?

5 A. Yes.

6 Q. What name were you supposed to use when you go visit him?

7 A. Andy Cohen.

8 Q. Andy what?

9 A. Cohen.

10 Q. Cohen?

11 A. Yes.

12 Q. And you learned of that named from Mr. Davis?

13 A. Yes.

14 Q. So you -- so just so we're clear, you would show your I.D.
15 and say you're visiting Mr. Andy Cohen?

16 A. Yes.

17 Q. And then what was your understanding what would happen
18 next?

19 A. That we would discuss the --

20 Q. Who would you discuss it with?

21 A. Martin Ballard.

22 (Audio recording was played.)

23 Q. So line seven of page 11 of the transcript he says, "Just
24 be cool. Because worst case scenario, they can turn around
25 and try to hit my ass with obstruction. See what I'm saying?"

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1 Know what I'm saying?" What was he talking about there?

2 A. When I come visit him, he was -- instead of come visit him
3 under his name, come see him as Andy Cohen.

4 Q. And when Mr. Ballard was talking about getting hit with
5 obstruction, did you know what he was talking about?

6 A. Yes.

7 Q. Tell the Court what he was talking about.

8 A. Me and him discussing the trial.

9 (Audio recording was played.)

10 Q. That's the end of the call. Page 11 of the transcript we
11 just heard he says, "I'm going to call Bra let them know to
12 just lay off all that talk and rah rah shit." What was he
13 talking about?

14 A. Talk in the streets about me cooperating.

15 Q. And during -- again, the plan changed and he's talking
16 about you blowing the trial. Were you intending, when you
17 were talking to him, did you ever intend to actually go
18 through with blowing the trial?

19 A. No.

20 Q. Why were you playing along and talking to him in this
21 manner?

22 A. In fear of my safety.

23 MR. PHILLIPS: All right. Your Honor, we have two
24 more calls, then we'll be close to wrapping up. In fact,
25 we'll wrap up. Your Honor, this one is on the screen and will

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1 track. It was just a matter of timing when we got the
2 transcripts in time, so it will be on your screen, if you want
3 to follow that way, but you also have a hard copy as well.

4 THE COURT: I've got mine.

5 MR. PHILLIPS: So this is January 17, 2014, call 2108
6 and it's part of Exhibit 17 as well. And we'll start playing
7 this call.

8 THE COURT: Let me ask you something, when you make a
9 call at the jail, you're not limited in the time you can talk?
10 When you have --

11 A. When someone calls you --

12 THE COURT: What?

13 A. -- from the jailhouse?

14 THE COURT: Yeah.

15 A. Yes.

16 THE COURT: You are limited?

17 A. Yeah, I think the call is like 15 minutes.

18 THE COURT: I see. All right.

19 BY MR. PHILLIPS:

20 Q. So it's clear, was Mr. Ballard calling you directly or
21 were you calling Mr. Ballard from the jail? To the jail?
22 Were you making the call to the jail?

23 A. No.

24 Q. How were you getting in touch with him?

25 A. Through Anthony Davis.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. So Mr. Davis was receiving the call from Mr. Ballard.

2 A. Yeah.

3 Q. And then Mr. Davis would then call you?

4 A. Yes.

5 Q. And how would you talk to Mr. Ballard?

6 A. On three-way.

7 THE COURT: You were using a cell phone?

8 A. Yes, sir.

9 Q. It was like a conference call?

10 A. Yes.

11 Q. Okay. So Mr. Ballard wasn't directly calling your number?

12 A. No.

13 (Audio recording was played.)

14 Q. He's talking fast there; who's on this phone call?

15 A. Mr. Ballard.

16 Q. You recognize his voice?

17 A. Yes.

18 Q. And did you recognize the other voice he's talking to?

19 A. Me.

20 Q. Okay. And does it start with you?

21 A. Excuse me?

22 Q. Did the call start with you? Were you the first voice

23 with Mr. Ballard on that call? Is there someone else on the
24 call?

25 A. Davis.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. Okay. Now, line 13 of this transcript says, "I was
2 waiting until I get another pipe, because I ain't know how the
3 other pipe is." What did you take that to mean? What's a
4 pipe?

5 A. Another line phone.

6 Q. Okay. And then down at line 18 he says, when he refers to
7 the skinny MF-er, who was he talking about? If you know. Who
8 was he referring to? Line 18 and 19. Do you know when you
9 refer to the skinny MF-er, who he was referring to?

10 A. Me.

11 MR. PHILLIPS: We can continue.

12 (Audio recording was played.)

13 Q. We're going to go back up to line six. "You got to make
14 sure you write it -- make sure you put it like that, like I
15 never did nothing. You know what I'm saying? And that black
16 MF-er is a good person." Who is the black MF-er?

17 A. Him.

18 Q. And you got to put it like it's Mr. Ballard saying like I
19 never did nothing. What was he talking about?

20 A. Like he never sold drugs.

21 Q. Okay. Now, but if you were to write something that he
22 never did nothing, would that be the truth? If you wrote
23 that, would that be the truth?

24 A. No.

25 (Audio recording was played.)

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. We're on page four of the transcript. He told you what to
2 say -- before you went inside there, he told you what to say,
3 didn't tell you nothing like that? You said no. What were
4 y'all talking about?

5 A. The meeting with the agents.

6 Q. Who was he asking whether they had told you what to say?

7 A. Oh, my attorney.

8 Q. Okay. But he did not tell you what to say before that
9 meeting?

10 A. No.

11 (Audio recording was played.)

12 Q. He said that put -- him and you in another bracket. What
13 was he talking about?

14 A. The amount of cocaine.

15 Q. Amount of cocaine that you told the agents?

16 A. Yes.

17 Q. And then you said, "What do I need to do?" And he said,
18 "Get a clear piece of thing," and then he starts talking about
19 telling them from the start. What was he telling you to do at
20 that point?

21 A. Write a letter, tell them I was pressured.

22 MR. PHILLIPS: Okay. Let's continue, please.

23 (Audio recording was played.)

24 Q. I'm backing up to page five of the transcript. He tells
25 you to put it -- to put in the letter that you were under

STEVEN MOSLEY - DIRECT EXAMINATION

1 pressure and that's why you talked. Is that right?

2 A. Yes.

3 Q. And at the end of the letter he tells you, "You did it
4 under pressure, that you didn't feel right lying about it, so
5 that's why you're writing this now." He tells you what to
6 write in the letter, correct?

7 A. Yes.

8 Q. And he tells you it's going to go to my people. Who was
9 it going to go to?

10 A. His attorney.

11 MR. PHILLIPS: Okay. Let's continue.

12 (Audio recording was played.)

13 Q. When he says keep, "Like you're still with the program,"
14 what was he talking about?

15 A. Testifying.

16 Q. And testifying, tell us, what was the program? What was
17 y'all's plan?

18 A. To blow the trial.

19 MR. PHILLIPS: Okay. Please continue.

20 (Audio recording was played.)

21 Q. This is a female voice now?

22 A. Yes.

23 Q. Who is that?

24 A. My wife.

25 Q. That's your wife?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. Yes.

2 Q. So what happened at this point, you were on the phone with
3 Mr. Ballard --

4 A. Yeah.

5 Q. -- through Mr. Davis, and then she takes the phone from
6 you?

7 A. Yes.

8 Q. Okay. So where were y'all when this call happened?

9 A. On the front porch.

10 Q. Was Mr. Davis present?

11 A. Yes.

12 Q. Okay. So were you talking directly on Mr. Davis' phone?

13 A. Yes.

14 Q. This wasn't a three-way call?

15 A. No.

16 Q. Did you know -- don't tell us what he said, but did you
17 know why Mr. Davis was at your house?

18 A. Yes, to pick up a letter.

19 Q. And the letter that y'all been talking about on these
20 calls?

21 A. Yes.

22 Q. And had he ever been to your house before?

23 A. No.

24 Q. How did that make you feel to have Mr. Davis in your
25 house?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. Not too comfortable.

2 Q. Why?

3 A. Just made my wife feel uncomfortable.

4 Q. So this is your wife talking with Mr. Ballard?

5 (Audio recording was played.)

6 Q. Now, during this period when all this is happening in
7 January of 2014, was your wife aware of the FaceBook posts?

8 A. Yes.

9 Q. And she was aware that you were cooperating?

10 A. Yes.

11 Q. And had y'all expressed concerns to one another regarding
12 fear for your safety?

13 A. Yes.

14 Q. And that was because of what?

15 A. The FaceBook.

16 Q. That word of your cooperation was in broadcast?

17 A. Yes.

18 Q. And who were you afraid of?

19 A. All just, you know, worried about the family's safety.

20 Q. Were you afraid of Mr. Ballard?

21 A. Well, I know he was locked up, but -- yes.

22 Q. You were still afraid of him?

23 A. Yeah, retaliation, yes.

24 Q. And why were you afraid of him even though he was still
25 locked up?

STEVEN MOSLEY - DIRECT EXAMINATION

1 A. I just didn't want anything to happen, you know, to my
2 family.

3 Q. And at the time of all these calls, you had already
4 learned about what -- you said you found out the day after
5 Mr. Brothers had been shot?

6 A. Yes.

7 Q. And that was before these calls?

8 A. Yes.

9 Q. Okay. Now we're going to go to the final call.

10 THE COURT: After putting me through what you put me
11 through since 3:00 o'clock, I'll give you one moment.

12 MR. PHILLIPS: Thank you, Judge. My wiser counsel
13 with me is on your side. Well, let's go to Government's
14 Exhibit 13.

15 THE COURT: I see you didn't take that good advice.

16 MR. PHILLIPS: No, Exhibit 13 is not a call. And I
17 may still -- I may still not take his good advice, Your Honor,
18 but just give me one second.

19 BY MR. PHILLIPS:

20 Q. Now, during this call Mr. Davis is in your house, right?

21 A. Right.

22 Q. And Mr. Ballard's telling you to write the letter.

23 A. Right.

24 Q. That phone call ended; was there another phone call?

25 A. Yes.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. And during that phone call did Mr. Ballard tell you to
2 write the letter now and not wait?

3 A. Yeah, he wanted it now, yes.

4 Q. And did he tell you what to put in that letter?

5 A. Yes.

6 Q. And we'll show you Government's Exhibit 13. Do you
7 recognize this?

8 A. Yes.

9 Q. Can you publish, or can you read this for the Court? Dear
10 Martin?

11 A. "Dear Martin, this is Chase. Those people wanted me to
12 tell them things on you so I lied and made things up to help
13 myself under that pressure. I never dealt no drugs, but they
14 think I did because of the situation afterwards. I love you
15 and I'm here for you.

16 Q. And then you signed it Chase Mosley?

17 A. Yes.

18 Q. Now, there's a notary down here, Janet Hurd, my commission
19 expires August 14. Did you do this letter in front of a
20 notary?

21 A. No.

22 Q. Who was around you when you wrote this letter?

23 A. No one.

24 Q. And what did you do with the letter after you wrote it?
25 Did you write it the same day or night that you were making

STEVEN MOSLEY - DIRECT EXAMINATION

1 these calls on January 17?

2 A. The next day.

3 Q. You did that the next day?

4 A. Yes, sir.

5 Q. Why didn't you do it while you were on the phone or that
6 same day when y'all were on the phone when Mr. Ballard was
7 telling you to do it?

8 A. Because my wife was there; I didn't want her to know.

9 Q. Okay. And so you wrote it the next day. Then what did
10 you do with it once you wrote it?

11 A. I gave it to Davis.

12 Q. How did he get it from you?

13 A. He came by and got it.

14 Q. And when you gave it to him, is that the last time you saw
15 it till this trial came about?

16 A. Yes.

17 Q. And when you gave it to him there was no notary, no
18 signature from a notary?

19 A. No.

20 Q. Okay. Now, why did you write this letter?

21 A. Out of fear, safety for my family.

22 Q. And in this letter you say you lied and made things up to
23 help yourself under that pressure. Was that what you wrote in
24 the Exhibit 13? Was that true?

25 A. No.

STEVEN MOSLEY - DIRECT EXAMINATION

1 Q. Was what you told the agents true?

2 A. Yes.

3 Q. And what you told the Court today true?

4 A. Yes.

5 Q. Regarding your dealings with Martin Ballard?

6 A. Yes.

7 MR. PHILLIPS: One moment, Your Honor. I may be
8 done. And just one last question.

9 Q. So in the calls we already heard and the call that we are
10 not playing, you have heard all those, did Mr. Ballard tell
11 you repeatedly that you were under pressure?

12 A. Yes.

13 Q. He told you to put that in the letter?

14 A. Yes.

15 Q. Mr. Mosley, were you under pressure from the Government to
16 talk to them and tell them about your dealings with
17 Mr. Ballard?

18 A. No.

19 MR. PHILLIPS: No further questions, Your Honor. And
20 I took his good advice.

21 THE COURT: Thank you. Are you going to spend much
22 time with this witness?

23 MR. THEOS: Your Honor, I would imagine I'd spend
24 anywhere from 30 to 45 minutes with him.

25 THE COURT: You'll have to do that another day. We

STEVEN MOSLEY - DIRECT EXAMINATION

1 have to do that Friday.

2 MR. THEOS: That's fine, Your Honor. I understand.

3 THE COURT: We talked the first part of the week
4 we're going to be here Tuesday, Wednesday, skip Thursday and
5 be here Friday.

6 MR. RICHARDSON: Yes, Your Honor.

7 THE COURT: Then Friday we'll decide what we're going
8 to do next week. Because we all agreed we need to take at
9 least one day.

10 MR. RICHARDSON: That's a bare minimum, Your Honor.

11 THE COURT: I wouldn't be against a little longer,
12 but --

13 MR. RICHARDSON: Your Honor, I think we're set up for
14 Friday and we've got witnesses for then and then we've got
15 witnesses set up for Monday. We've got some witnesses flying
16 in from out of town to be here Monday.

17 THE COURT: Well, that suits me. I just said we
18 ought to decide before we leave Friday, what we're going to do
19 the following week.

20 MR. RICHARDSON: I agree, I was just giving you a
21 heads up, I'm going to ask you to have court on Monday since
22 we have people flying in.

23 THE COURT: You have people coming in, we'll have
24 court, that's no problem, it's just what day we all would
25 rather be off.

STEVEN MOSLEY - DIRECT EXAMINATION

1 MR. RICHARDSON: Government defers to you, Your
2 Honor, whatever day you prefer, suits us.

3 THE COURT: You might not find me up here one day.

4 MR. RICHARDSON: The problem is then we're going to
5 be here a lot of weeks, Judge, so you understand the good with
6 the bad.

7 THE COURT: All right. We'll recess until
8 10:00 o'clock Friday morning.

9 MR. RICHARDSON: Thank you, Your Honor.

10 THE COURT: Then we'll do what we can Friday. All
11 right. I'll see you Friday.

12 MR. THEOS: Judge, would you just give --

13 THE COURT: I'll give him instructions.

14 I don't want you to discuss this case with anyone. You're
15 going to get in some trouble with -- Did I sentence you?

16 A. No.

17 THE COURT: Wasn't me?

18 A. No.

19 THE COURT: But you're going to -- you would get in a
20 lot of trouble with the Court if you discussed this case with
21 anybody, your wife, your children, whoever it might be, until
22 this case is -- until it's over. So don't you be going around
23 talking about it. You understand that?

24 A. Yes, sir.

25 THE COURT: Okay. You may be excused. You're to be

STEVEN MOSLEY - DIRECT EXAMINATION

1 back Friday; you understand that?

2 A. Yes, sir.

3 THE COURT: Is that witness in custody?

4 MR. RICHARDSON: No, sir.

5 THE COURT: I didn't think so. All right. We'll be
6 in recess.

7

8 (Court adjourned at 4:50 p.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR